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1981 EDITION

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UPDATING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE OR FINALLY ADOPTED IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF APRIL 27, 1999, NOTES TO EMERGENCY LEGISLATION ADOPTED AS OF MARCH 31, 1999, REORGANIZATION PLANS NOT DISAPPROVED AS OF DECEMBER 31, 1998, AND NOTES TO DECISIONS REPORTED AS OF MARCH 1, 1999

VOLUME 6

1996 REPLACEMENT

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TITLE 24. PRISONERS AND THEIR TREATMENT.

Chapter 1. Probation.

§ 24-101. Probation system; probation officers; appointment.

Repealed.

(Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 6(c)(2)(A).)

Editor's notes. — This section was previously omitted.

§ 24-104. Discharge from or continuance of probation; modification or revocation of order.

(a) Upon the expiration of the term fixed for such probation, the probation officer shall report that fact to the court, with a statement of the conduct of the probationer while on probation, and the court may thereupon discharge the probationer from further supervision, or may extend the probation, as shall seem advisable. At any time during the probationary term the court may modify the terms and conditions of the order of probation, or may terminate such probation, when in the opinion of the court the ends of justice shall require, and when the probation is so terminated the court shall enter an order discharging the probationer from serving the imposed penalty; or the court may revoke the order of probation and cause the rearrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed, or both, as the case may be, or any lesser sentence. If imposition of sentence was suspended, the court may impose any sentence which might have been imposed. If probation is revoked, the time of probation shall not be taken into account to diminish the time for which he was originally sentenced.

(b) If a person violates a condition of probation by using a controlled substance or by failing to comply with prescribed treatment for the use of a controlled substance, the court may order, in addition to or in lieu of the actions and sanctions authorized in subsection (a) of this section, the temporary placement of the person in custody, when in the opinion of the court such action

is necessary for treatment or to assure compliance with conditions of probation. (June 25, 1910, 36 Stat. 865, ch. 433, § 4; 1973 Ed., § 24-104; Mar. 10, 1983, D.C. Law 4-202, § 4, 30 DCR 173; Oct. 10, 1998, D.C. Law 12-165, § 4, 45 DCR 2980.)

Effect of amendments. — D.C. Law 12-165 added (b).

Legislative history of Law 12-165. — Law 12-165, the "Truth in Sentencing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-523, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 23, 1998, it was assigned Act No. 12-343 and transmitted to both Houses of Congress for its review. D.C. Law 12-165 became effective on October 10, 1998.

Cited in United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

§ 24-105. Office and supplies for probation officers; expenses.

Repealed.

(June 25, 1910, 36 Stat. 865, ch. 433, § 5; Mar. 4, 1919, 40 Stat. 1325, ch.122; 1973 Ed., § 24-105; Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 6(c)(2)(B).)

§ 24-106. Psychiatric services.

The Mayor shall appoint a qualified psychiatrist and a qualified psychologist whose services shall be available to the following officers to assist them in carrying out their duties:

* * * * *

(3) Such officers of the Department of Corrections as the Director thereof shall designate; and

* * * * *

(June 3, 1997, D.C. Law 11-275, § 15, 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made technical correction in (3).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

CHAPTER 2. INDETERMINATE SENTENCES AND PAROLES.

Subchapter I. General Provisions.

Subchapter III. Medical and Geriatric Parole.

Subchapter I. General Provisions.

§ 24-201.2. Powers and duties of Board; transfer of employees, official records, etc. from Board of Parole.

Release from mental hospital. — Under statutes and regulations governing convicted felons, defendant convicted of criminal charge and found not guilty by reason of insanity on other charges may not be released to the community without the approval of the Parole Board. Harman v. United States, App. D.C., 718 A.2d 114 (1998).

§ 24-203. Indeterminate sentences; life sentences; minimum sentences.

Cited in Heard v. United States, App. D.C., 686 A.2d 1026 (1996).

§ 24-203.1. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.

(a) Notwithstanding any other provision of law, for any felony committed on or after August 5, 2000, the court shall impose a sentence that:

(1) Reflects the seriousness of the offense and the criminal history of the offender;

(2) Provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and

(3) Provides the offender with needed educational or vocational training, medical care, and other correctional treatment.

(b) If an offender is sentenced to imprisonment, or to commitment pursuant to § 24-803, under this section, the court shall impose an adequate period of supervision to follow release from the imprisonment or commitment.

(c) In the case of a felony described in § 24-1212(h), a sentence under this section of imprisonment, or of commitment pursuant to § 24-803, shall be for a definite term, which shall not exceed the maximum term allowed by law or be less than any minimum term required by law. A person sentenced under this section to imprisonment, or to commitment pursuant to § 24-803, for such a felony shall serve the term of imprisonment or commitment specified in the sentence, less any time credited toward service of the sentence under subsection (d) of this section.

(d) A person sentenced to imprisonment, or to commitment pursuant to § 24-803, under this section may receive good time credit toward service of the sentence only as provided in 18 U.S.C. § 3624(b).

(e) The sentence imposed under this section on a person convicted of assault with intent to commit first or second degree sexual abuse or child sexual abuse in violation of § 22-501, or of armed robbery in violation of § 22-3202, shall be not less than 2 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in § 22-3201, providing for the control of dangerous weapons in the District of Columbia. The sentence imposed under this section on a person convicted of

first or second degree sexual abuse or child sexual abuse in violation of §§ 22-4102, 22-4103, or 22-4108 through 22-4110, shall not be less than 7 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined.

(f) The sentence imposed under this section shall not be less than one year for a person convicted of:

(1) Assault with a dangerous weapon on a police officer in violation of § 22-505, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction;

(2) Illegal possession of a pistol in violation of § 22-3203, occurring after the person has been convicted of violating that section; or

(3) Possession of the implements of a crime in violation of § 22-3601, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction. (July 15, 1932, 47 Stat. 697, ch. 492, § 3a, as added Oct. 10, 1998, D.C. Law 12-165, § 2, 45 DCR 2980.)

Effect of amendments. — D.C. Law 12-165 added this section.

Legislative history of Law 12-165. — Law 12-165, the "Truth in Sentencing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-523, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 23, 1998, it was assigned Act No. 12-343 and transmitted to both Houses of Congress for its review. D.C. Law 12-165 became effective on October 10, 1998.

§ 24-204. Authorization of parole; custody; discharge.

Eligibility for parole discretionary. — Under this section, eligibility for parole is discretionary; thus claims alleging a miscalculation of a parole eligibility date do not necessarily result in immediate or speedier releases and need not be brought in habeas corpus. Anyanwutaku v. Moore, 151 F.3d 1053 (D.C. Cir. 1998).

Release from mental hospital. — Under statutes and regulations governing convicted felons, defendant convicted of criminal charge and found not guilty by reason of insanity on other charges may not be released to the community without the approval of the Parole Board. Harman v. United States, App. D.C., 718 A.2d 114 (1998).

Conditional release not equivalent of appeal. — Conditional release from hospital for mentally ill is not equivalent of parole. Harman v. United States, App. D.C., 718 A.2d 114 (1998).

Credit for time in custody. — Credit for custody has been construed broadly to mean legal custody as a way of embracing parole; in particular, the provisions of subsection (a) of this section intimate that time served on parole is credited toward the expiration of the sentence at least if the prisoner is on parole at the time the sentence expires. United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

Cited in Hall v. Henderson, App. D.C., 672 A.2d 1047 (1996); Young v. United States, App. D.C., 694 A.2d 891 (1997).

§ 24-205. Arrest for violation of parole.

If said Board of Parole, or any member thereof, shall have reliable information that a prisoner has violated his parole, said Board, or any member thereof, at any time within the term or terms of the prisoner's sentence, may issue a warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner. Any officer of the District of Columbia penal institutions, any officer or designated civilian employee of the Metropolitan Police Department of the District of Columbia, or any federal officer authorized

to serve criminal process within the United States to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such prisoner and returning or removing him to the penal institution of the District of Columbia from which he was paroled or to such penal or correctional institution as may be designated by the Attorney General of the United States. (July 15, 1932, 47 Stat. 698, ch. 492, § 5; June 6, 1940, 54 Stat. 242, ch. 254, § 4; July 17, 1947, 61 Stat. 378, ch. 263, § 2; 1973 Ed., § 24-205; _____, 1999, D.C. Law 12- (Act 12-613), § 9, 46 DCR 1328.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-613) inserted "or designated civilian employee" in the second sentence.

Temporary amendment of section. — Section 9 of D.C. Law 12-(Act 12-492) inserted "or designated civilian employee."

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 9 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 9 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 9 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the application of the act.

Section 13 of D.C. Act 13-13 provides for the application of the act.

Legislative history of Law 12-(D.C. Act 12-492). — Law 12-(D.C. Act 12-492), the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

§ 24-206. Hearing after arrest; confinement in non-District institution.

Time spent in custody. — Credit for custody has been construed broadly to mean legal custody as a way of embracing parole; in particular, the provisions of § 24-204(a) intimate that time served on parole is credited toward the expiration of the sentence at least if the prisoner is on parole at the time the sentence expires. United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

Time spent on parole not credited against remaining sentence.

After revocation of a person's parole, time that the person spent on parole before revocation cannot be credited against his sentence. United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

Construction with § 24-431. — Section 24-431(a), which preserves a prisoner's street time as credit against the sentence in the event parole is revoked, does not impliedly repeal subsection (a) of this section, which provides that the time a prisoner is on parole shall not be taken into account to diminish the time for which he was sentenced. United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

Credit for time served prior to revocation of parole. — The D.C. Department of Corrections has consistently interpreted § 24-431(a) to mean that even a prisoner whose parole has been revoked is entitled to credit for time served on parole before revocation. Under this interpretation, § 24-431(a) trumps the older subsection (a) of this section. The U.S. Parole Commission, however, construes § 24-431(a) as inapplicable to any prisoner whose parole has been revoked. Consequently, D.C. offenders serving aggregated D.C. and federal

sentences under the supervision of the U.S. Parole Commission receive no credit for time served on parole if their parole is revoked, while D.C. offenders under the supervision of the D.C. Department of Corrections do receive credit. Noble v. United States Parole Comm'n, 82 F.3d 1108 (D.C. Cir. 1996).

§ 24-208. Prisoners who may be paroled.

Cited in Anyanwutaku v. Moore, 151 F.3d 1053 (D.C. Cir. 1998).

§ 24-209. Federal Parole Board.

Cited in Noble v. United States Parole Comm'n, 82 F.3d 1108 (D.C. Cir. 1996); United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

Subchapter II. Interstate Parole and Probation Compact.

§ 24-251. Authority of Mayor to execute Interstate Parole and Probation Compact.

Cited in United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

Subchapter III. Medical and Geriatric Parole.

§ 24-261. Definitions.

For the purposes of this subchapter, the term:

* * * * *

(2) "Permanently incapacitated inmate" means a person convicted of a violation of a District of Columbia criminal law by a court in the District of Columbia and who, by reason of an existing physical or medical condition which is not terminal, is permanently and irreversibly physically incapacitated, and who does not constitute a danger to himself or to society; and

* * * * *

(June 3, 1997, D.C. Law 11-275, § 16, 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made technical correction in (2).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

D.C. Law Review. — For essay, "The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority," see 4 D.C.L. Rev. 77 (1998).

§ 24-263. Board of Parole authority.

Board of Parole abolished. — Section 11231(a) and (b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L.

105-33; 111 Stat. 745), transferred the authority of the Board of Parole to the U.S. Parole Commission and abolished the D.C. Board of Parole.

§ 24-266. Eligibility for public assistance.

(a) When a person has been granted either medical or geriatric parole and applies for public assistance, including medical assistance, the Department shall forward the application for assistance to the Department of Human Services, and advise the Board that an application for assistance has been made.

(b) The Department of Human Services shall, within 60 days of receipt of a medical or geriatric parolee's application for assistance, determine the eligibility of the person for general assistance, public assistance, Medicaid, or any other District or federal medical assistance program.

(c) Repealed.

(d) Notwithstanding any other law, when a person is released on medical or geriatric parole and is in need of public assistance, including medical assistance, the Department of Human Services shall be responsible for the administrative costs of the initial and any subsequent eligibility determination and the costs of any public assistance, including medical assistance, following a person's release on medical or geriatric parole for so long as the person is eligible. (May 15, 1993, D.C. Law 9-271, § 7, 40 DCR 792; Mar. 20, 1998, D.C. Law 12-60, § 704, 44 DCR 7378.)

Effect of amendments. — D.C. Law 12-60, in (a), deleted "general or" preceding "public assistance"; and repealed (c).

Temporary amendments of section. — Section 5 of D.C. Law 12-21 deleted "general or" preceding "public" in (a); and repealed (c).

Section 8(b) of D.C. Law 12-21 provides that the act shall expire on the 225th day of its having taken effect.

Section 704 of D.C. Law 12-59 deleted "general or" preceding "public" in (a); and repealed (c).

Section 2001(b) of D.C. Law 12-59 provides the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provides that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary amendment of section, see § 5 of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

For temporary amendment of section, see § 704 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 704 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 12-21. — Law 12-21, the "General Assistance Program Termination Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-169. The Bill was adopted on first and second readings on May 6, 1997, and June 3, 1997, respectively. Signed by the Mayor on June 18, 1997, it was assigned Act No. 12-98 and transmitted to both Houses of Congress for its review. D.C. Law 12-21 became effective on September 23, 1997.

Legislative history of Law 12-59 — Law 12-59, the "Fiscal Year 1998 Revised Budget Support Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 24-268. Medical and geriatric reduction of sentence.

(a) Upon a motion by the Director of the Federal Bureau of Prisons, the court may reduce the sentence of any person convicted of a felony under the District of Columbia Code committed on or after August 5, 2000, and sentenced to a determinate term of imprisonment which is not subject to parole, and shall impose an adequate period of supervision to follow release, based upon a finding that:

(1) The inmate is permanently incapacitated or terminally ill because of a medical condition which was not known to the court at the time of sentencing, and the release of the inmate under supervision is not incompatible with public safety; or

(2) The inmate is 65 years or older and has a chronic infirmity, illness, or disease related to aging, and the release of the inmate under supervision is not incompatible with public safety.

(b) The court shall act expeditiously on any motion submitted by the Director of the Federal Bureau of Prisons. If the court receives a request directly from an inmate or a representative of an inmate, the court may refer the matter to the Federal Bureau of Prisons for a motion or a statement of reasons as to why a motion will not be filed. (May 15, 1993, D.C. Law 9-271, § 8a, as added Oct. 10, 1998, D.C. Law 12-165, § 5, 45 DCR 2980.)

Effect of amendments. — D.C. Law 12-165 added this section.

Legislative history of Law 12-165. — See note to § 24-203.1.

CHAPTER 3. INSANE DEFENDANTS.

§ 24-301. Commitment during trial; restoration to competency; acquittal by reason of insanity; release after confinement; expenses of confinement; inconsistent statutes superseded; escaped persons; insanity defense; motions for relief.

I. GENERAL CONSIDERATION.

Transfer of Persons Found Not Guilty by Reason of Insanity. — For transfer of certain persons found not guilty by reason of insanity in the District of Columbia, see § 301 of Pub. L. 104-294, 110 Stat. 3489, codified at 18 U.S.C. § 4243.

Due process implicated.

The procedures of the hospital responsible for an acquittee-patient's care, if followed, together with statutory hearing rights of insanity acquittees, meet due process requirements, where the hospital's procedures include a preliminary determination by mental health care professionals that circumstances involving the patient's condition warrant at least temporary inpatient examination and care of the patient, consistent with the terms of the conditional release order. Brown v. United States, App. D.C., 682 A.2d 1131 (1996).

Right to treatment.

There is nothing in this section which precludes the court from authorizing the hospital responsible for the acquittee-patient's treatment to return the patient temporarily for inpatient care under circumstances which warrant it with the view toward assimilating the patient back into the community when consistent with the safety of the community and the patient. Brown v. United States, App. D.C., 682 A.2d 1131 (1996).

Temporary rehospitalization of insanity acquittees. — It is not required that the procedures of In re Richardson, App. D.C., 481 A.2d 473 (1984), be followed for temporary rehospitalization of insanity acquittees previously released under court order. Brown v. United States, App. D.C., 682 A.2d 1131 (1996).

The procedures for temporary rehospitalization of criminal acquittees and civil committees

need not be the same in order to meet the requirements of due process. Brown v. United States, App. D.C., 682 A.2d 1131 (1996).

Cited in Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997); In re Clark, App. D.C., 700 A.2d 781 (1997); United States v. Hinckley, 984 F. Supp. 35 (D.D.C. 1997).

V. RELEASE FROM CONFINEMENT.

Requirements for release of prisoners must be satisfied. — Defendant, both a patient and a prisoner, is subject to provisions of this section and statutes governing release of prisoners and may not be released until he satisfies all requirements. Harman v. United States, App. D.C., 718 A.2d 114 (1998).

Conditional release not authorized. — Petitioner failed to meet his burden that he would not be a danger to himself or others should he be permitted unescorted visits with his parents off hospital grounds, given the severity of the his criminal conduct, his conduct at the hospital since his admission, and his current behavior. United States v. Hinckley, 967 F. Supp. 557 (D.D.C. 1997).

Revocation of conditional release.

The decision of a hospital responsible for an acquittee-patient's care to return the patient to the hospital temporarily for treatment pursuant to its authority under court order, when properly exercised, is not equivalent to a revocation of conditional release. Brown v. United States, App. D.C., 682 A.2d 1131 (1996).

§ 24-302. Commitment while serving sentence.

Emergency transfers. — Neither this section nor Super. Ct. Ment. H. R. 9 requires a warrant of commitment or detainer for an emergency transfer of a prisoner who is serving a sentence. In re Khamvongsa, App. D.C., 697 A.2d 19 (1997).

§ 24-303. Restoration to sanity.

Cited in Harman v. United States, App. D.C., 718 A.2d 114 (1998).

CHAPTER 4. PRISONS AND PRISONERS.

Subchapter I. Prisons.

Subchapter II-A. Department of Corrections Employee Mandatory Drug and Alcohol Testing.

Subchapter II-B. Criminal Background Investigations.

Subchapter III. Correctional Industries Fund.

Subchapter III-A. Prison Industries.

Subchapter IV. Work Release Program.

Subchapter I. Prisons.

§ 24-402. Imprisonment for more than 1 year; jurisdiction over Reformatory prisoners; transfer from penitentiary to Reformatory.

Cited in United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

§ 24-410. Detention of United States prisoners in Washington Asylum and Jail.

Cited in United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

§ 24-418. Sale of products of Workhouse and Reformatory.

Repealed.

(June 5, 1920, 41 Stat. 869, ch. 234; Feb. 28, 1923, 42 Stat. 1357, ch. 148, § 1; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 24-418; May 8, 1996, D.C. Law 11-117, § 17(c), (d), 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-418a. Sale of gun mountings.

Repealed.

(June 1, 1957, 71 Stat. 45, Pub. L. 85-45, § 1;1973 Ed., § 24-418a; May 8, 1996, D.C. Law 11-117, § 17(c), (d), 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-425. Place of imprisonment.

Cited in United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997); In re Khamvongsa, App. D.C., 697 A.2d 19 (1997); Al Malik v. District of Columbia, App. D.C., 703 A.2d 1250 (1998); Harman v. United States, App. D.C., 718 A.2d 114 (1998).

§ 24-429. Educational good time.

Cited in Stevens v. Quick, App. D.C., 678 A.2d 28 (1996).

§ 24-431. Jail time; parole.

Construction with § 24-206(a). — Subsection (a) of this section, which preserves a prisoner's street time as credit against the sentence in the event parole is revoked, does not impliedly repeal § 24-206(a), which provides that the time a prisoner is on parole shall not be taken into account to diminish the time for which he was sentenced. United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

Credit for time spent in custody. — Credit for custody has been construed broadly to mean legal custody as a way of embracing parole; in particular, the provisions of § 24-204(a) intimate that time served on parole is credited toward the expiration of the sentence at least if the prisoner is on parole at the time the sentence expires. United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

Credit for time served prior to revocation of parole. — The D.C. Department of Corrections has consistently interpreted subsection (a) of this section to mean that even a prisoner whose parole has been revoked is entitled to credit for time served on parole before revocation. Under this interpretation, subsection (a) of this section trumps the older § 24-206(a). The U.S. Parole Commission, however, construes subsection (a) of this section as inapplicable to any prisoner whose parole has been revoked. Consequently, D.C. offenders serving aggregated D.C. and federal sentences under the supervision of the U.S. Parole Commission receive no credit for time served on parole if their parole is revoked, while D.C. offenders under the supervision of the D.C. Department of Corrections do receive credit. Noble v. United States Parole Comm'n, 82 F.3d 1108 (D.C. Cir. 1996).

After revocation of a person's parole, time that the person spent on parole before revocation cannot be credited against his sentence. United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997).

Subchapter II. Department of Corrections.

§ 24-441. Created.

Cited in Triplett v. District of Columbia, 108 F.3d 1450 (D.C. Cir. 1997).

§ 24-442. Powers; promulgation of rules.

This provision encompasses common law rule.

The legislature has assigned to the Department of Corrections statutory responsibility for the safekeeping, care, protection, instruction, and discipline of all persons committed to its institutions; and, prison authorities and employees are required to exercise reasonable care in carrying out these obligations. Phillips v. District of Columbia, App. D.C., 714 A.2d 768 (1998).

Individual fault usually required for recovery. — Although prison personnel have a general duty to exercise due care, they are not insurers of an inmate's safety or well-being; in most cases, individualized fault is required for liability to attach, while vicarious liability without fault is the exception. Herbert v. District of Columbia, App. D.C., 716 A.2d 196 (1998).

Duty to exercise care as to medical contractors. — The District may lawfully delegate its obligation to exercise reasonable care in providing medical services, and cannot be held liable for the malpractice of a contractor, absent a showing that it failed to fulfill its duty to properly select and supervise contractors. Herbert v. District of Columbia, App. D.C., 716 A.2d 196 (1998).

Failure to provide Spanish-speaking staff. — Hispanic plaintiff prisoners' claim for injunctive relief in their suit alleging federal constitutional and statutory violations for failure to provide Spanish-speaking staff, which inter alia denied them adequate health care, obstructed their right to practice religion, and undermined their right to fair hearings, was denied because it was not settled whether this provision allows for the relief sought. Franklin v. District of Columbia, 960 F. Supp. 394 (D.D.C. 1997).

Claims by Lorton inmates to be heard in District of Columbia courts.

Because the District passed, implemented

and enforces the Lorton Regulation Approval Act (LRAA), comity strongly weighed in favor of federal court's deferring to D.C. courts to allow them to decide whether the District intended through LRAA to create a private right of action, and if so, what remedies, monetary or otherwise, are available to aggrieved parties. Neal v. District of Columbia, 931 F. Supp. 16 (D.D.C. 1996).

Claims for injunctive relief. — A federal district court abused its discretion by asserting its supplemental jurisdiction over inmates' non-federal claims for injunctive relief under this section because there was no District jurisprudence to give the federal court adequate guidance; no District court had ever awarded injunctive relief, nor had it ever been sought, under this section. Women Prisoners of D.C. Dep't of Cors. v. District of Columbia, 93 F.3d 910 (D.C. Cir. 1996), cert. denied, 520 U.S. 1196, 117 S. Ct. 1552, 137 L. Ed. 2d 701 (1997).

No evidence of practice of excessive use of force. — There was no evidence that District officers knew of or disregarded a practice of excessive use of force by the District's correctional officers for the purpose of imposing liability on the District. Triplett v. District of Columbia, 108 F.3d 1450 (D.C. Cir. 1997).

Cited in McNeil Pharmaceutical v. Hawkins, App. D.C., 686 A.2d 567 (1996), cert. denied, — U.S. —, 118 S. Ct. 63, 139 L. Ed. 2d 26 (1997); Al Malik v. District of Columbia, App. D.C., 703 A.2d 1250 (1998).

Subchapter II-A. Department of Corrections Employee Mandatory Drug and Alcohol Testing.

§ 24-448.1. Definitions.

For the purposes of this subchapter, the term:

(1) "Applicant" means all persons who have filed any written employment application forms to work at the Department.

(2) "Council" means the Council of the District of Columbia.

(3) "Department" means the District of Columbia Department of Corrections.

(4) "Director" means the Director of the District of Columbia Department of Corrections.

(5) "High potential risk employee" ("HPR employee") means any Department employee who has inmate care and custody responsibilities or who works within a correctional institution, including any employees and managers who are carried in a law enforcement retirement status.

(6) "Law enforcement retirement status" means any employee who contributes to the 7.5% retirement status category.

(7) "Post-accident employee" means any Department employee who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.

(8) "Random testing" means drug or alcohol testing taken by Department employees at an unspecified time for the purposes of determining whether any Department employees have used drugs or alcohol and, as a result, are unable to satisfactorily perform their employment duties.

(9) "Reasonable suspicion" means a belief by a supervisor that an employee is under the influence of an illegal substance or alcohol to the extent that the employee's ability to perform his or her job is impaired. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral. (Sept. 20, 1996, D.C. Law 11-158, § 2, 43 DCR 3702.)

Temporary addition of subchapter. — D.C. Law 11-91 added this subchapter.

Section 7(b) of D.C. Law 11-91 provided that the act shall expire after the 225th day of its having taken effect or on the effective date of the Department of Corrections Employee Man-

datory Drug and Alcohol Testing Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary addition of subchapter, see §§ 2 through 5 of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Emergency Act of 1995 (D.C. Act 11-167, November 28, 1995, 42 DCR 6805) and §§ 2 through 5 of the Department of Corrections Employee Mandatory Drug and Alcohol Testing Congressional Review Emergency Act of 1996 (D.C. Act 11-208, February 14, 1996, 43 DCR 794).

Legislative history of Law 11-91. — Law 11-91, the "Department of Corrections Employee Mandatory Drug and Alcohol Testing Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-461. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-174 and transmitted to both Houses of Congress for its review. D.C. Law 11-91 became effective on February 27, 1996.

Legislative history of Law 11-158. — Law 11-158, the "Department of Corrections Employee Mandatory Drug and Alcohol Testing Act of 1996," was introduced in Council and assigned Bill No. 11-463, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-287 and transmitted to both Houses of Congress for its review. D.C. Law 11-158 became effective on September 20, 1996.

§ 24-448.2. Employee testing.

(a) The following Department employees shall be tested for drug and alcohol use:

(1) Applicants;

(2) Those employees who have had a reasonable suspicion referral;

(3) Post-accident employees, as soon as reasonably possible after the accident; and

(4) HPR employees.

(b) Only HPR employees shall be subject to random testing.

(c) Employees shall be given at least a 30-day written notice from September 20, 1996, that the Department is implementing a drug and alcohol testing program and shall be given an opportunity to seek treatment. Following September 20, 1996, the Department shall procure a testing vendor and testing shall be implemented as described herein. (Sept. 20, 1996, D.C. Law 11-158, § 3, 43 DCR 3702.)

Temporary addition of subchapter. — See note to § 24-448.1.

Emergency act amendments. — For temporary addition of subchapter, see note to § 24-448.1.

Legislative history of Law 11-91. — See note to § 24-448.1.

Legislative history of Law 11-158. — See note to § 22-448.1.

§ 24-448.3. Testing methodology.

(a) Testing shall be performed by an outside contractor. The contractor shall be a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job related drug and alcohol forensic testing.

(b) For random testing, the contractor shall come on-site to the Department's institutions and shall collect urine specimens and split the samples. The contractor shall perform enzyme-multiplied-immunoassay technique ("EMIT") testing on one sample and store the split sample. Any positive EMIT test shall then be confirmed by the contractor using gas chromatography/mass spectrometry ("GCMS") methodology.

(c) Any Department employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored

sample be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer.

(e) Any Department employee who operates a motor vehicle in the District of Columbia shall be deemed to have given his or her consent, subject to conditions in this subchapter, to the testing of the person's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable suspicion or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person was operating or in physical control of a motor vehicle within the District while that person's breath contained .08% or more, by weight, of alcohol, while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle was impaired by the consumption of an intoxicating beverage.

(f) A breathalyzer shall be deemed positive by the Department's testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol. A positive breathalyzer test shall be grounds for termination of employment in accordance with the subchapter I of Chapter 6 of Title 1. (Sept. 20, 1996, D.C. Law 11-158, § 4, 43 DCR 3702; Apr. 13, 1999, D.C. Law 12-227, § 3, 46 DCR 502.)

Effect of amendments. — D.C. Law 12-227, in (e), substituted ".08%" for ".10%" following "person's breath contained"; and in (f), substituted ".38 micrograms" for ".48 micrograms."

Temporary addition of subchapter. — See note to § 24-448.1.

Emergency act amendments. — For temporary addition of subchapter, see note to § 24-448.1.

For temporary amendment of section, see § 3 of the Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-599, January 20, 1999, 46 DCR 1147).

Legislative history of Law 11-91. — See note to § 24-448.1.

Legislative history of Law 11-158. — See note to § 22-448.1.

Legislative history of Law 12-227. — Law 12-227, the "Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-625, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 11, 1998, it was assigned Act No. 12-548 and transmitted to both Houses of Congress for its review. D.C. Law 12-227 became effective on April 13, 1999.

§ 24-448.4. Procedure and employee impact.

The drug testing policy shall be issued in advance to inform employees and allow them the opportunity to seek treatment. Thereafter, any confirmed positive test results or a refusal to submit to the test shall be grounds for termination of employment in accordance with subchapter I of Chapter 6 of Title 1. This testing program is for all employees, including management, and shall be implemented as a single Department program. The results of a random test may not be turned over to any law enforcement agency without

the employee's written consent. (Sept. 20, 1996, D.C. Law 11-158, § 5, 43 DCR 3702.)

Temporary addition of subchapter. — See note to § 24-448.1.

Emergency act amendments. — For temporary addition of subchapter, see note to § 24-448.1.

Legislative history of Law 11-91. — See note to § 24-448.1.

Legislative history of Law 11-158. — See note to § 24.448.1.

Legislative history of Law 11-230. — Law 11-230, the "Department of Corrections Criminal Background Investigation Authorization Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-937. The Bill was adopted on first and second readings on October 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 17, 1996, it was assigned Act No. 11-462 and transmitted to both Houses of Congress for its review. D.C. Law 11-230 became effective on April 9, 1997.

Subchapter II-B. Criminal Background Investigations.

§ 24-448.11. Authorization of investigation.

(a) The Director of the Department of Corrections ("Director") shall conduct, on a biennial basis, National Crime Information Center ("NCIC") criminal background investigations on all Department employees including non-probationary employees.

(b) At the Director's discretion, the Director also may conduct NCIC investigations at unspecified times. (June 19, 1998, D.C. Law 12-126, § 2, 45 DCR 1232.)

Temporary addition of section. — Section 2 of D.C. Law 11-230 added this section.

Section 4(b) of D.C. Law 11-230 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-68 added this section.

Section 4(b) of D.C. Law 12-68 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of section, see § 2 of the Department of Corrections Criminal Background Investigation Authorization Emergency Act of 1996 (D.C. Act 11-444, December 6, 1996, 44 DCR 116), § 2 of the Department of Corrections Criminal Background Investigation Authorization Congressional Review Emergency Act of 1997 (D.C. Act 12-33, March 11, 1997, 44 DCR 1913), § 2 of the Department of Corrections Criminal Background Investigation Authorization Second Emergency Act of 1997 (D.C. Act 12-188, October 30, 1997, 44 DCR 6968), and § 2 of the Department of Corrections Criminal Background Investigation Authorization Congressional Recess Emergency Act of 1998 (D.C. Act 12-251, January 29, 1998, 45 DCR 899).

Legislative history of Law 11-230. — Law 11-230, the "Department of Corrections Criminal Background Investigation Authorization Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-937. The Bill was adopted on first and second readings on October 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 17, 1996, it was assigned Act No. 11-462 and transmitted to both Houses of Congress for its review. D.C. Law 11-230 became effective on April 9, 1997.

Legislative history of Law 12-68. — Law 12-68, the "Department of Corrections Criminal Background Investigation Authorization Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-403. The Bill was adopted on first and second readings on October 7, 1997, and November 4, 1997, respectively. Signed by the Mayor on November 11, 1997, it was assigned Act No. 12-210 and transmitted to both Houses of Congress for its review. D.C. Law 12-68 became effective on March 20, 1998.

Legislative history of Law 12-126. — Law 12-126, the "Department of Corrections Criminal Background Investigation Authorization Act of 1998," was introduced in Council and assigned Bill No. 12-029, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-260 and transmitted to both Houses of Congress for its review. D.C. Law 12-126 became effective on June 19, 1998.

Subchapter III. Correctional Industries Fund.

§ 24-451. Establishment of Fund.

Repealed.

(Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 1; 1973 Ed., § 24-451; May 8, 1996, D.C. Law 11-117, § 17(a), 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-452. Availability of Fund for rehabilitation of convicts.

Repealed.

(Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 2; 1973 Ed., § 24-452; May 8, 1996, D.C. Law 11-117, § 17(a), 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-453. Sale of products and services; deposit of receipts; use.

Repealed.

(Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 3; 1973 Ed., § 24-453; Sept. 26, 1995, D.C. Law 11-52, § 102, 42 DCR 3684; May 8, 1996, D.C. Law 11-117, § 17(a), 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-454. Annual report; disposition of funds.

Repealed.

(Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 4; 1973 Ed., § 24-454; May 8, 1996, D.C. Law 11-117, § 17(a), 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-455. Transfer of assets.

Repealed.

(Oct. 3, 1964, 78 Stat. 1000, Pub. L. 88-622, § 5; 1973 Ed., § 24-455; May 8, 1996, D.C. Law 11-117, § 17(a), 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

Subchapter III-A. Prison Industries.

§ 24-458.1. Definitions.

For the purposes of this subchapter, the term:

(1) "Bureau of Justice Assistance Private Sector Prison Industry Enhancement Certification Program", or "PIE Program", means the federal grant-in-aid program administered by the Bureau of Justice Assistance, United States Department of Justice, pursuant to 42 U.S.C. 3741-3761, and participation in which by the states or the District of Columbia affords an exemption from the general federal prohibition against open market sale of prisoner-produced goods, pursuant to 18 U.S.C. 1761(c).

(2) "Correctional facility" means any building or group of buildings and concomitant services operated as a single management unit by the District of Columbia Department of Corrections for the purpose of housing and providing services to persons ordered confined pending trial or upon conviction and sentencing for a violation of law.

(3) "Department" means the District of Columbia Department of Corrections.

(4) "Director" means the Director of the District of Columbia Department of Corrections.

(5) "Joint venture" means a production unit in or part of a prison industry, that:

(A) Employs sentenced prisoners;

(B) Is wholly or partly owned, operated, or managed by a joint venture partner that is a private-sector employer; and

(C) Sells goods or services in the open market, including in interstate and foreign commerce, or to the federal government, the District of Columbia, or any state or political subdivision of a state.

(6) "Prison industries" means an organized plan, including equipment and facilities, for the production and distribution of goods or services on the grounds of a correctional facility to aid disciplinary and rehabilitative goals of the prison system.

(7) "Prison Industries Fund" means the revolving fund established by § 24-458.2.

(8) "Prisoner" means any person who is confined to an adult correctional facility.

(9) "Private-sector employer" means:

(A) Any person who, for compensation, uses the services of an individual; and

(B) Any administrator, agent, assignee, conservator, executor, liquidator, officer, receiver, trustee, trustee in bankruptcy, or other representative of a person described in subparagraph (A) of this paragraph.

(10) "Substance abuse" means any pattern of pathological use of alcohol or other drug that causes impairment in social or occupational functioning, or that produces physiological dependency as evidenced by physical tolerance or by physical symptoms when it is withdrawn.

(11) "Washington, D.C., region" means the geographic area that encompasses the District of Columbia and adjacent portions of the State of Maryland

and the Commonwealth of Virginia. (May 8, 1996, D.C. Law 11-117, § 2, 43 DCR 1179.)

Section references. — This section is referred to in §§ 36-303 and 46-101.

Legislative history of Law 11-117. — Law 11-117, the "Prison Industries Act of 1996," was introduced in Council and assigned Bill No. 11-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1996, and February 6, 1996, respectively. Signed by the Mayor on February 26, 1996, it was assigned Act No. 11-221 and transmitted to both Houses of Congress for its review. D.C. Law became effective on May 8, 1996.

Mayor authorized to issue rules. — Section 19 of D.C. Law 11-117 provided that, in accordance with subchapter I of Chapter 15 of Title 1, the Mayor shall issue rules to implement this subchapter.

§ 24-458.2. Establishment of Prison Industries Fund.

(a) There is hereby established in the Treasury a revolving fund to be known as the Prison Industries Fund ("Fund"). The Fund shall be used to receive and disburse funds from appropriations, income from operations, fees, gifts by devise or bequest, donations, grants, investments, and revenue from any and all sources pursuant to this subchapter.

(b) Revenue deposited into the Fund is specifically designated to be expended by the Department for the administration, improvement, and maintenance of property and programs managed by the Department and shall supplement and not replace services provided by the Department. The Fund shall not provide funding to any other District government agencies.

(c) Proceeds of the Fund may be invested in a prudent and reasonable manner consistent with applicable District government policies and procedures with recommendations from the Prison Industries Joint Venture Advisory Board established by § 24-458.7.

(d) The Fund shall be continuing. Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time but shall be continually available to the Department for the uses and purposes set forth in this subchapter, subject to authorization by Congress in an appropriations act.

(e) The Fund shall be available without fiscal-year limitation and shall be used by the Mayor to maintain the District of Columbia's prison industries program in accordance with this subchapter. The accounting for the Fund shall be maintained on the accrual basis, including provision for employees' accrued annual leave and depreciation of fixed assets, and financial reports shall be prepared on the basis of such accounting. (May 8, 1996, D.C. Law 11-117, § 3, 43 DCR 1179.)

Section references. — This section is referred to in §§ 24-458.1 and 24-458.2.

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.3. Use of Fund revenues.

Receipts from the sales of goods and services produced by the prison industries program shall be deposited to the credit of the Fund. The Fund shall be used for all necessary expenses directly related to the Fund, including personal services; payments to inmates, or payments to their dependents in accordance with this subchapter; purchase, repair, and maintenance of equipment; purchase of raw materials and supplies; payment of dues and expenses

of attendance at meetings and conventions, as approved by the Mayor; maintenance and repair of buildings used for Fund purposes; alteration of existing facilities used for Fund purposes; and, within the limits of amounts provided in annual appropriation acts, acquisition and improvement of real property. (May 8, 1996, D.C. Law 11-117, § 4, 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.4. Maintenance of the prison industries program; administration by the Director.

(a) The Mayor shall maintain a prison industries program which shall be administered by the Director and which shall provide for the operation of commercial, manufacturing, sales, and service enterprises that are located on the grounds of a correctional facility and that employs prisoners. The prison industries program shall be comprised of 2 components, designated as the government-enterprise component and the joint-venture component.

(b) The government-enterprise component shall be comprised of prison industry operations that are owned, managed, and operated as an entity of the Department. This component shall neither be subject to the prevailing wage requirements set forth in § 24-458.10 nor the workers' compensation requirements set forth in § 24-458.12(a), except that any prison industry within this component that seeks and receives approval under the PIE Program shall be subject to the requirements of §§ 24-458.10(a) and 24-458.12(a). Government-enterprise component operations are authorized to produce, offer for sale, and sell goods and services to agencies of the District and to any other legally-eligible purchaser. Upon recommendation by the Director and by the Prison Industries Joint Venture Advisory Board established by § 24-458.7, the Mayor may require any government-enterprise component prison industry to comply with the federal requirements for the purpose of applying for federal government approval under the PIE Program to offer for sale and sell goods and services in interstate commerce and to the federal government.

(c) The joint-venture component shall be comprised of prison industry operations that are jointly owned, managed, and operated by the Department and its joint-venture partners in accordance with § 24-458.5 and other applicable federal and District laws. Except as otherwise provided by § 24-458.5, joint-venture component prison industries shall be organized and operated with the intent of complying with all necessary requirements to qualify for approval under the PIE Program to offer for sale and to sell goods and services in interstate commerce. (May 8, 1996, D.C. Law 11-117, § 5, 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.5. Sales, advertising and marketing of prison industries products and services; tax exemption.

(a) Whenever goods or services scheduled for purchase by an agency of the District government are produced or can be produced by a prison industry, the

agency shall purchase the goods or services from the prison industries unless the Director provides written certification that:

(1) A prison industry cannot provide the goods or services on the terms and conditions required by the agency; or

(2) The agency has been quoted a price below the market price.

(b) In addition to the agencies of the District government, goods and services produced by prison industries may be sold to:

(1) Any department or agency of any other state, city, county, or territory of the United States;

(2) Any department or agency of the federal government;

(3) Any not-for-profit organization, upon the enactment by Congress of an amendment to 18 U.S.C. 1761(b), to authorize prison industry sales to not-for-profit organizations; and

(4) Open-market purchasers, in accordance with 18 U.S.C. 1761(c).

(c) The Mayor may develop and implement an on-going advertising and marketing plan to sell goods and services produced by prison industries to authorized purchasers. This advertising and marketing plan shall include:

(1) Regular publication and distribution to authorized purchasers of a catalog and price list for goods and services produced by prison industries;

(2) Procedures for responding to invitations for bids or requests for proposals issued by any governmental unit that is an authorized purchaser; and

(3) Procedures for use of advertising materials, speaking engagements, direct-mail marketing, telemarketing, director contacts by salespersons, and other marketing techniques to inform authorized purchasers about the availability, prices, and quality of goods or services that are produced or can be produced by the prison industries.

(d) Subject to the approval of the Council, by act, the Mayor may include in the terms of a prison industry joint venture agreement an exemption from applicable District taxes, or other tax incentives, when the Mayor determines this is necessary to secure a private-sector employer's participation. (May 8, 1996, D.C. Law 11-117, § 6, 43 DCR 1179.)

Section references. — This section is referred to in §§ 1-1181.4 and 24-458.4.

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.6. Joint venture agreements.

(a) The Mayor is authorized to enter into an agreement with any private-sector employer to establish a joint venture for the management and operation of all or any part of a prison industry.

(b) The terms of a joint venture agreement shall include:

(1) Area space requirements, equipment, security services, and utilities;

(2) Procedures for the selection of prisoners for employment; and

(3) A commitment by the private-sector employer to indemnify, hold harmless, and defend the District, its agents, officers, and employees against any and all claims or liability of any kind arising from, based on, or resulting from any act, default, or omission of the private-sector employer under the agreement. (May 8, 1996, D.C. Law 11-117, § 7, 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.7. Prison Industries Joint Venture Advisory Board.

Repealed.

(May 8, 1996, D.C. Law 11-117, § 8, 43 DCR 1179; Apr. 29, 1998, D.C. Law 12-86, § 401(h), 45 DCR 1172.)

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

§ 24-458.8. Employment of prisoners; terms and conditions; opportunities for advancement; qualifications.

(a) A prison industry shall employ eligible prisoners in all entry-level positions to the extent feasible.

(b) Prisoners employed in a prison industry shall not work more than 40 hours per week, except that prisoners may volunteer to work overtime hours for overtime payment at 1 ½ times the normal hourly wage when necessary to meet a prison industry's production needs.

(c) For positions requiring an advanced level of skills or experience and for supervisory positions, a prison industry may employ nonprisoner personnel if the prison industry staff responsible for reviewing the qualifications of eligible prisoner job applicants:

(1) Demonstrate to the satisfaction of the Director that no eligible prisoner job applicant currently is qualified for the position; and

(2) Develop a plan satisfactory to the Director for training prisoners employed in entry-level positions, the goal of which is to enable prisoners to attain an advanced level of skills or experience for supervisory positions within a specific time.

(d) Subject to the approval of the Director, each prison industry shall develop and provide the following, in writing, to all prisoner employees and job applicants:

(1) Job descriptions;

(2) Schedule of hours of work;

(3) Wage schedule and procedures for recording hours worked and making payment of wages earned in accordance with § 24-458.11;

(4) Work place rules of safety and conduct;

(5) Description of the factors to be considered and the procedures to be followed in evaluating employee performance, making promotions, and granting wage increases;

(6) Description of training to be provided on the job; and

(7) Description of disciplinary action that may be taken in the event that an employed prisoner violates workplace rules of safety and conduct or

otherwise fails or neglects to perform job responsibilities in a satisfactory manner.

(e) The items described in subsection (d) of this section shall be discussed orally with prisoner job applicants. Each applicant, as a condition of employment, shall sign a statement affirming that he or she:

(1) Understands and agrees to abide by the workplace rules of safety and conduct;

(2) Will perform job responsibilities in a satisfactory manner; and

(3) Is acting voluntarily and is not under any condition of duress.

(f) To qualify as eligible for available employment in a prison industry, a prisoner shall:

(1) Complete the application on forms to be provided by the prison industry;

(2) Undergo a medical examination and substance abuse screening, which shall be provided by the Department;

(3) Not be determined by the Director to be ineligible for employment due to physical or mental incapacity, substance abuse, confinement in administrative or disciplinary segregation, or other relevant circumstance; and

(4) Sign the statement required by subsection (e) of this section.

(g) Each prisoner may receive educational good time credit for participating in the prison industries program pursuant to § 24-429. (May 8, 1996, D.C. Law 11-117, § 9, 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.9. Status of prisoners with respect to prison industries.

Prisoners who apply and are eligible for employment in a prison industry shall have no right to obtain employment in the industry. Prisoners employed in a prison industry shall not be regarded as having any right concerning that employment, shall not be regarded as District employees or employees of a private-sector employer, and shall not be regarded as having any rights or privileges accorded to District government employees or employees of a private-sector employer other than those expressly set forth in this subchapter. (May 8, 1996, D.C. Law 11-117, § 10, 43 DCR 1179; May 22, 1998, D.C. Law 12-114, § 4, 45 DCR 486.)

Effect of amendments. — D.C. Law 12-114 validated a previously made technical correction to D.C. Law 11-117.

Legislative history of Law 11-117. — See note to § 24-458.1.

Legislative history of Law 12-114. — Law 12-114, the "Criminal Code Technical Amendments Act of 1997," was introduced in Council and assigned Bill No. 12-406, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-233 and transmitted to both Houses of Congress for its review. D.C. Law 12-114 became effective on May 22, 1998.

§ 24-458.10. Wages of employed prisoners; unemployment compensation.

(a) All prisoners employed by a prison industry shall be paid wages which shall be established by the Director and approved by the Mayor. All prisoners employed by a prison industry that is approved under the PIE Program shall be paid no less than the prevailing wage for work of a similar nature in the Washington, D.C., region as determined by the District of Columbia Department of Employment Services.

(b) Nothing in this section or elsewhere in this subchapter may be construed to create a private right, enforceable by an employed prisoner, to any wages established in accordance with subsection (a) of this section.

(c) Employment by a prison industry shall not entitle any prisoner to the benefits authorized by Chapter 1 of Title 46, unless the prisoner is employed in a prison industry approved under the PIE Program. In the latter case, the prisoner shall not be qualified to receive any payments for unemployment compensation while incarcerated. (May 8, 1996, D.C. Law 11-117, § 11, 43 DCR 1179.)

Section references. — This section is referred to in § 24-458.4.

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.11. Disbursement of wages to employed prisoners; deductions; accounting.

(a) Wages paid to prisoners employed by a prison industry shall be considered taxable income for purposes subchapter I of Chapter 18 of Title 47.

(b) Wages paid to prisoners employed by a prison industry wholly owned and operated by the District shall be paid from the Fund. Wages paid to prisoners employed by a prison industry operated pursuant to a prison industry joint venture agreement shall be paid by each private-sector employer who is a party to the agreement.

(c) Wages due each prisoner employed in a prison industry shall be disbursed according to a schedule of deductions which, after withholding District, federal, and state income taxes, shall be established by the Director.

(d) Except in the case of a prisoner employed in a prison industry approved under a PIE Program, the total amount deducted under subsection (c) of this section, including taxes withheld, shall not exceed 80% of gross wages and may include the following:

(1) Reasonable charges paid to the District for room and board;

(2) Contributions to the Crime Victims' Compensation Fund in accordance with § 3-414;

(3) Allocations for the support of the prisoner's family pursuant to statute, court order, or agreement;

(4) Payment of any civil judgment resulting from the prisoner's criminal conduct; and

(5) Payment of restitution or fines ordered by the sentencing court.

(e) In the case of a prisoner employed in a prison industry approved under the PIE Program, the total amount deducted under subsection (c) of this section, including taxes withheld, shall not exceed 80% of gross wages and may include the following:

(1) Reasonable charges imposed by the District for room and board;

(2) Contributions to the Crime Victims' Compensation Fund in accordance with § 3-414, but only if the amount of the contributions is not less than 5% or more than 20% of the prisoner's gross wages; and

(3) Allocations for the support of the prisoner's family pursuant to statute court order or agreement.

(f) The remaining 20% of the wage payment shall be available to the prisoner for the purchase of commissary items for personal use and for deposit in a personal account established for each prisoner by the Department.

(g) The Director shall establish procedures to provide each prisoner employed in a prison industry with a regular accounting showing gross wages earned, amount deducted in each category of deductions, and the amount credited to the prisoner's personal account maintained by the Department. All wages credited to the prisoner's personal account shall be made available to the prisoner at the time of release. The prisoner may draw upon funds in his or her personal account for any legal purpose consistent with Department rules. (May 8, 1996, D.C. Law 11-117, § 12, 43 DCR 1179.)

Section references. — This section is referred to in §§ 3-414 and 24-458.8.

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.12. Workers' compensation insurance.

(a) The requirements of Chapter 3 of Title 36 shall apply to prisoners employed in any prison industries program that is approved under the PIE Program. Nothing in this section shall be construed as requiring Workers' Compensation Act or comparable insurance benefits for prisoners employed in a prison industry that is not federally approved under that program.

(b) The Director or the parties to a prison industry joint venture agreement may purchase insurance to protect against the risk of loss, theft, or damage of finished or unfinished products produced by a prison industry wherever these products, equipment, materials, and supplies are located while in the possession of the Department or a prison industry, in transit to or from the possession of the Department or a correctional industry, or in storage. The cost of the insurance shall be paid from the Fund if such payment is authorized by Congress in an appropriations act. (May 8, 1996, D.C. Law 11-117, § 13, 43 DCR 1179.)

Section references. — This section is referred to in § 24-458.4.

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.13. Annual report; annual inventory.

(a) The Director shall provide the Mayor and the Council with an annual report on the prison industries program and the Fund no later than December 1 of each year for the fiscal year ending September 30 of the preceding year.

(b) The report shall be prepared according to generally accepted accounting principles and shall include:

(1) A description of each prison industry, including the terms of any prison industry joint venture agreements establishing the industry, the quantities of

goods and services produced, and an itemized accounting of purchasers, sales, and receipts;

(2) The number of prisoners employed in each prison industries program;

(3) A profit-and-loss statement;

(4) Production costs, including overhead, purchase of materials and supplies, capital expenditures, and wages paid to prisoner employees and nonprisoner employees;

(5) The average length of time between the District government's receipt of orders and purchasers' receipt of the goods and services ordered; and

(6) The average length of time between purchasers' receipt of goods and services ordered and the Fund's receipt of payment.

(c) The Department shall prepare an annual inventory listing prison industries program equipment and materials on hand at the beginning and end of each fiscal year. (May 8, 1996, D.C. Law 11-117, § 14, 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.14. Disposition of profits.

The Mayor is authorized to retain any accumulated profits from a prison industries program for the purpose of acquiring or improving personal property, or to increase working capital to planned operating levels in a prison industries program. The Mayor is also authorized to retain accumulated profits from a prison industries program for payments to inmates employed in a prison industries program as well as to other inmates. (May 8, 1996, D.C. Law 11-117, § 15, 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

§ 24-458.15. Transfer of assets.

All assets which, on May 8, 1996, are components of the Correctional Industries Fund, as created by § 24-451, shall be transferred to the Fund created in § 24-458.2. (May 8, 1996, D.C. Law 11-117, § 16, 43 DCR 1179.)

Legislative history of Law 11-117. — See note to § 24-458.1.

Mayor authorized to issue rules. — Section 19 of D.C. Law 11-117 provided that, in accordance with subchapter I of Chapter 15 of Title 1, the Mayor shall issue rules to implement this subchapter.

Subchapter IV. Work Release Program.

§ 24-461. Authority granted to establish program.

There is hereby authorized to be established in the District of Columbia a work release program under which any person who is: (1) convicted of a misdemeanor or of violating a municipal regulation or an act of Congress in the nature of a municipal regulation, and is sentenced to serve in a penal institution a term of 1 year or less; (2) imprisoned for nonpayment of a fine, or for contempt of court; or (3) committed to jail after revocation of probation pursuant to § 24-104, may, whenever the judge of the sentencing court is

satisfied that the ends of justice and the best interests of society as well as of such person would be subserved thereby or whenever after service by the person of one-third of his or her sentence, the Board of Parole is satisfied that the ends of justice and the best interests of society as well as of the sentenced person would be served thereby, be granted the privilege of a work release for the purpose of working at his employment or seeking employment. Such a work release privilege may also be granted, in the discretion of the sentencing court or the Director of the Department of Corrections, whenever there exist such special circumstances as merit the granting of the privilege. As used in this subchapter, the word "sentence" and its derivatives shall be construed to include sentencing, imprisonment, and commitment as referred to in this section. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 2; 1973 Ed., § 24-461; Mar. 10, 1983, D.C. Law 4-202, § 5, 30 DCR 173; June 3, 1997, D.C. Law 11-273, § 4(a), 43 DCR 6168.)

Effect of amendments. — D.C. Law 11-273 inserted "or the Director of the Department of Corrections" in the last sentence.

Emergency act amendments. — For temporary amendment of section, see § 4(a) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 4(a) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and § 4(a) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Section 6 of D.C. Act 11-436 provides for the application of the act.

Section 6 of D.C. Act 12-35 provides for application of the act.

Legislative history of Law 11-273. — Law 11-273, the "Zero Tolerance for Guns Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-153, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-431 and transmitted to both Houses of Congress for its review. D.C. Law 11-273 became effective on June 3, 1997.

Conditional release from mental hospital. — Conditional release from hospital for mentally ill cannot serve as equivalent of work release or furlough where defendant is ineligible for such programs because he has not satisfied statutory requirements for participation in those programs. Harman v. United States, App. D.C., 718 A.2d 114 (1998).

§ 24-462. Recommendations; order of court or Board of Parole required.

At the time of imposition of sentence, the probation officers of the court or the Director of the Department of Corrections, may recommend to, or the person sentenced may request, the sentencing court that such person be granted the privilege of work release. At any time subsequent to the imposition of sentence, the person sentenced may request the sentencing court or the Director of the Department of Corrections that such person be granted the privilege of work release. No person shall be given work release privileges except by order of the sentencing court or the Director of the Department of Corrections, or by order of the Board of Parole pursuant to § 24-461. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 3; 1973 Ed., § 24-462; Mar. 10, 1983, D.C. Law 4-202, § 6, 30 DCR 173; June 3, 1997, D.C. Law 11-274, § 19(c), 44 DCR 1232.)

Effect of amendments. — D.C. Law 11-274 substituted "the probation officer of the court or the Director of the Department" for "or at any time subsequent thereto, the probation officers of the courts or the Director, Department" in the first sentence; inserted the second sentence; and inserted "or the Director of the Department of Corrections" in the last sentence.

Emergency act amendments. — For temporary amendment of section, see § 4(b) of the

Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and see § 4(b) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Section 6 of D.C. Act 11-436 provides for the application of the act.

Section 6 of D.C. Act 12-35 provides for application of the act.

Legislative history of Law 11-274. — Law 11-274, the "Sex Offender Registration Act of 1996," was introduced in Council and assigned Bill No. 11-386, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-510 and transmitted to both Houses of Congress for its review. D.C. Law 11-274 became effective on June 3, 1997.

Conditional release from mental hospital. — Conditional release from hospital for mentally ill cannot serve as equivalent of work release or furlough where defendant is ineligible for such programs because he has not satisfied statutory requirements for participation in those programs. Harman v. United States, App. D.C., 718 A.2d 114 (1998).

§ 24-463. Conditions for release.

The Director of the Department of Corrections shall state in writing the terms and conditions under which a person granted work release privileges may be released from actual custody during the time necessary to proceed to the person's place of employment or other authorized places, perform specified activities, and return to a place of confinement designated by the Director of the Department of Corrections. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 4; 1973 Ed., § 24-463; June 3, 1997, D.C. Law 11-273, § 4(b), 43 DCR 6168.)

Effect of amendments. — D.C. Law 11-273 rewrote the section.

Emergency act amendments. — For temporary amendment of section, see § 4(b) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 4(b) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and § 4(b) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Section 6 of D.C. Act 11-436 provides for the application of the act.

Section 6 of D.C. Act 12-35 provides for application of the act.

Legislative history of Law 11-273. — See note to § 24-461.

§ 24-464. Regulations; individual plans.

The Council of the District of Columbia is authorized to promulgate from time to time such rules and regulations as it deems necessary for the administration by the Department of Corrections of the work release program. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 5; 1973 Ed., § 24-464; June 3, 1997, D.C. Law 11-273, § 4, 43 DCR 6168.)

Effect of amendments. — D.C. Law 11-273 deleted the former second sentence.

Emergency act amendments. — For temporary amendment of section, see § 4(d) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986) and § 4(c) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), see § 4(c) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Section 6 of D.C. Act 11-436 provides for the application of the act.

Section 6 of D.C. Act 12-35 provides for application of the act.

Legislative history of Law 11-273. — See note to § 24-461.

§ 24-465. Suspension of work release privilege; violations of work release plan.

(a) The Director of the Department of Corrections may suspend or revoke the work release privilege for any breach of discipline or infraction of institution regulations. The Court may revoke the work release privilege at any time, either upon its own motion or upon recommendation of the Director of the Department of Corrections.

(b) Any prisoner who willfully fails to return at the time and to the place of confinement designated in his work release plan shall be fined not more than $1,000 or imprisoned not more than 180 days, or both, such sentence of imprisonment to run consecutively with the remainder of previously imposed sentences. All prosecutions for violation of this subsection shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants. (Nov. 10, 1966, 80 Stat. 1519, Pub. L. 89-803, § 6; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 24-465; June 3, 1997, D.C. Law 11-273, § 4(d), 43 DCR 6168.)

Effect of amendments. — D.C. Law 11-273, in (a), rewrote the first sentence and made stylistic change in the second sentence; and, in the first sentence in (b), substituted "$1,000" for "$300" and substituted "180 days" for "90 days."

Emergency act amendments. — For temporary amendment of section, see § 4(e) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 4(d) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and see § 4(d) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Section 6 of D.C. Act 11-436 provides for the application of the act.

Section 6 of D.C. Act 12-35 provides for application of the act.

Legislative history of Law 11-273. — See note to § 24-461.

Subchapter V. Resocialization Furlough Program.

§ 24-482. Authority to grant furloughs.

Conditional release from mental hospital. — Conditional release from hospital for mentally ill cannot serve as equivalent of work release or furlough where defendant is ineligible for such programs because he has not satisfied statutory requirements for participation in those programs. Harman v. United States, App. D.C., 718 A.2d 114 (1998).

§ 24-483. Purposes of furloughs; furloughs over 12 hours.

(a) The Mayor, or his designated agent, may grant a furlough, except as provided in subsection (c) of this section, to any eligible resident:

(1) In order to visit the bedside of a dying relative, or to attend the funeral of a relative, in the Washington metropolitan area;

(2) Upon the recommendation of the institutional review committee, in order to call upon prospective employers in the Washington metropolitan area, enroll in an educational institution or program, obtain suitable housing prior to release, or to finalize parole supervision plans with an officer or employee of the Department; or

(3) Upon the recommendation of the institutional review committee, to participate in family and approved community, religious, or educational, social,

civic, and recreational activities, when it is determined that such participation will directly facilitate the transition from life in the facility or institution to life in the community.

(b) The Mayor, or his designated agent, may grant a furlough for the purposes specified in paragraph (1) of subsection (a) of this section outside of the Washington metropolitan area, so long as such furlough does not exceed 72 hours.

(c) The Mayor, or his designated agent, may grant a furlough to an eligible resident for longer than 12 hours, but for no longer than 72 hours, where he finds that, based on a report from the institutional review committee, such eligible resident:

(1) Has demonstrated complete institutional adjustment;

(2) Is strongly motivated to benefit from the program;

(3) Is considered to have exceptional potential for rehabilitation; and

(4) Will not, while on furlough, constitute a threat or danger to the community.

(d) For the purposes of this section, the term "relative" means a spouse, child (including a step-child, adopted child, or child to whom the resident, though not a natural parent, has acted in the place of a parent), parent (including a person who, though not a natural parent, has acted in the place of a parent), brother, or sister.

(e) In the event any eligible resident applies for a furlough for 1 of the reasons specified in paragraph (1) of subsection (a) of this section, verification of the death or seriousness of the illness, as the case may be, of the relative must be obtained from the attending physician, hospital physician, or funeral home director (as applicable), before such furlough may be granted. (1973 Ed., § 24-483; Apr. 23, 1977, D.C. Law 1-130, § 4, 23 DCR 9694; June 3, 1997, D.C. Law 11-275, § 17, 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated previously made stylistic and technical corrections throughout the section.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Conditional release from mental hospital. — Conditional release from hospital for mentally ill cannot serve as equivalent of work release or furlough where defendant is ineligible for such programs because he has not satisfied statutory requirements for participation in those programs. Harman v. United States, App. D.C., 718 A.2d 114 (1998).

Subchapter VI. HIV Testing of Certain Criminal Offenders.

§ 24-493. Rules.

Emergency act amendments.

For temporary authorization of the use of force and the carrying and use of weapons by correctional officers employed by the operator of the Correctional Treatment Facility and to exempt the Correction Treatment Facility from real property and deed recordation taxation, see § 2-6 of the Correctional Treatment Facility Emergency Act of 1996 (D.C. Act 11-457, December 13, 1996, 44 DCR 156), and see § 2-6 of the Correctional Treatment Facility Congressional Review Emergency Act of 1997 (D.C. Act 12-32, March 11, 1997, 44 DCR 1908).

Section 9 of D.C. Act 12-32 provides for application of the act.

Subchapter VII. Correctional Treatment Facility.

§ 24-495.1. Rules.

For the purposes of this subchapter, the term:

(1) "CTF" means the Correctional Treatment Facility.

(2) "Deadly force" means force which would likely cause death or serious bodily injury.

(3) "Non-deadly force" means force that normally would neither cause death nor serious bodily injury.

(4) "Private correctional officer" means any full-time or part-time employee of the private operator of the Correctional Treatment Facility or any other privately-operated prison facility housing inmates in the District of Columbia for the District of Columbia Department of Corrections or the Federal Bureau of Prisons, or the subcontractor of any private operator housing inmates in the District of Columbia for the District of Columbia Department of Corrections or the Federal Bureau of Prisons, whose primary responsibility is the supervision, protection, care, and control of inmates assigned to the Correctional Treatment Facility or any other privately-operated prison facility in the District of Columbia.

(5) "Private operator" means any individual, partnership, corporation, or incorporated association bound by contract with the District of Columbia or the United States to operate the Correctional Treatment Facility or any other prison facility housing inmates in the District of Columbia for the District of Columbia Department of Corrections or the Federal Bureau of Prisons. (June 3, 1997, D.C. Law 11-276, § 2, 44 DCR 1416; _____, 1999, D.C. Law 12-(Act 12-472), § 2(a)(2), 45 DCR 7991.)

Section references. — This section is referred to in § 47-2853.4.

Effect of amendments. — D.C. Law 12-(D.C. Act 12-472) rewrote (4) and (5).

Temporary amendment of section. — Section 2(a) of D.C. Law 12-164 rewrote (4) and (5).

Section 4(b) of D.C. Law 12-164 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of subchapter, see §§ 2-6 of the Correctional Treatment Facility Congressional Review Emergency Act of 1997 (D.C. Act 12-32, March 11, 1997, 44 DCR 1908).

For temporary amendment of section, see § 2(a) of the Correctional Treatment Facility Emergency Amendment Act of 1998 (D.C. Act 12-315, March 31, 1998, 45 DCR 2126), § 2(a) of the Correctional Treatment Facility Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-388, June 29, 1998, 45 DCR 4625), and § 2(a) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emergency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Section 4 of D.C. Act 12-388 provides for the application of the act.

Legislative history of Law 11-276. — Law 11-276, the "Correction Treatment Facility Act of 1996," was introduced in Council and assigned Bill No. 11-908, which was referred to the Committee on the Judiciary and the Committee of the Whole. The Bill was adopted on first and second readings on December 3, 1996, and December 17, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-523 and transmitted to both Houses of Congress for its review. D.C. Law 11-276 became effective on June 3, 1997.

Legislative history of Law 12-164. — Law 12-164, the "Correctional Treatment Facility Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-578. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was assigned Act No. 12-335 and transmitted to both Houses of Congress for its review. D.C. Law 12-164 became effective on October 10, 1998.

Legislative history of Law 12-(D.C. Act 12-472). — Law 12-(D.C. Act 12-472), the "Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Amendment Act of 1998," was introduced in Council and assigned Bill No. _____,

which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-472 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-472) became effective on _____.

§ 24-495.2. Use of deadly and non-deadly force.

(a) A private correctional officer may carry firearms provided by the private operator only in the following situations:

(1) While patrolling the perimeter grounds of the CTF or any other privately-operated prison facility;

(2) While transporting inmates assigned to the CTF or to any other privately-operated prison facility;

(3) While pursuing inmates assigned to the CTF or to any other privately-operated prison facility who have escaped from the custody of the Department of Corrections or the Federal Bureau of Prisons; and

(4) During a state of emergency as determined by the Department of Corrections or the Federal Bureau of Prisons.

(b) The use of either deadly force or non-deadly force by a private correctional officer employed by the private operator shall at all times be governed by Department of Corrections Order 5010.9, as such order may from time to time be amended or modified. Notwithstanding the provisions of § 22-3204, a private correctional officer shall have the right to possess and use firearms provided by, and in the course of employment with, the private operator; provided, that such carrying and use is in accordance with the policy established by the Department of Corrections, as set forth in Department Order 5011.1, as such order may from time to time be amended or modified. A private correctional officer shall be authorized to use such firearms only as a last resort, and then only in accordance with Department Order 5011.1.

(c) For the purposes of this section, the private operator shall be considered an organization authorized to register firearms pursuant to subchapter I of Chapter 23 of Title 6.

(d) Each private correctional officer shall be trained in the use of force and the use of firearms, in accordance with procedures that have been reviewed by the Department of Corrections. No employee of the private operator shall be authorized to carry and use firearms until such employee has successfully completed a training program for correctional officers that has been approved by the Department of Corrections. (June 3, 1997, D.C. Law 11-276, § 3, 44 DCR 1416; _____, 1999, D.C. Law 12- (Act 12-472), §§ 2(b), (c), 45 DCR 7991.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-472) added "or any other privately-operated prison facility" in (a)(1); added "or to any other privately-operated prison facility" in (a)(2) and (a)(3); added "or the Federal Bureau of Prisons" in (a)(3) and (a)(4); and substituted "operator" for "contractor" in (c).

Temporary amendment of section. — Section 2(b) of D.C. Law 12-164 added "or any other privately-operated prison facility" in (a)(1); added "or to any other privately-operated prison facility" in (a)(2) and (a)(3); added "or the Federal Bureau of Prisons" in (a)(3) and (a)(4); and, substituted "operator" for "contractor" in (c).

Section 4(b) of D.C. Law 12-164 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Correctional Treatment Facility Emergency Amendment Act of 1998 (D.C. Act 12-315, March 31, 1998, 45 DCR 2126), § 2(b) of the Correctional Treatment Facility Congressional

Review Emergency Amendment Act of 1998 (D.C. Act 12-388, June 29, 1998, 45 DCR 4625), and § 2(b) and (c) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emergency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Section 4 of D.C. Act 12-388 provides for the application of the act.

Legislative history of Law 11-276. — See note to § 24-495.1.

Legislative history of Law 12-164. — See note to § 24-495.1.

Legislative history of Law 12-(D.C. Act 12-472). — See note to § 24-495.1.

§ 24-495.2a. Registration of firearms for private operator.

(a) In order to register firearms, the private operator shall follow the following procedures:

(1) To register for interim approval, the private operator shall provide the Chief of the Metropolitan Police Department ("Chief of Police") with the serial numbers and storage places of firearms in the private operator's possession in the District of Columbia. If the Chief of Police determines that the information provided is satisfactory, he or she shall issue interim approval to the private operator for the weapons identified and held in the private operator's possession. The interim approval shall be valid for 90 days, during which time the private operator shall complete the actions necessary to register for permanent approval.

(2)(A) To register for permanent approval, the private operator shall provide the Chief of Police with the following information:

(i) The names and such other identifying information as the Chief of Police may require, of all private correctional officers who will be authorized by the private operator to carry and use firearms in the course of their assigned duties;

(ii) Records or other evidence acceptable to the Chief of Police to demonstrate that each private correctional officer authorized to carry and use firearms has received instructions about all applicable rules of the Department of Corrections or the Federal Bureau of Prisons regarding the use of force and deadly force in the course of his or her duties;

(iii) Records or other evidence acceptable to the Chief of Police to demonstrate that each private correctional officer authorized to carry and use firearms has successfully completed the training required by § 24-495.2(d); and

(iv) A sworn affidavit signed by each private correctional officer authorized to carry and use firearms attesting that he or she has read and understands all applicable rules of the Department of Corrections or the Federal Bureau of Prisons regarding the use of force and deadly force in the course of his or her duties.

(B) The Chief of Police, upon determining that the information submitted in accordance with this paragraph is satisfactory, shall issue permanent registration approval to the private operator for the firearms in the private operator's possession in the District of Columbia.

(b) A private operator who is issued firearms registration approval pursuant to this section shall be subject to the duties and revocation provisions set forth in §§ 6-2318 and 6-2319, and other applicable rules and laws of the District of Columbia. A private operator shall notify the Chief of Police whenever any private correctional officer authorized to carry and use firearms leaves the

private operator's employment at a facility in the District or otherwise ceases to be authorized to carry and use firearms.

(c) Nothing in § 24-495.2 or this section shall be construed to allow any private correctional officer or any other person to remove any weapon registered to the private operator from the premises and grounds of the private operator's facility except in the performance of assigned duties and in accordance with laws and rules of the District and federal governments. (June 3, 1997, D.C. Law 11-276, § 3a, as added _____, 1999, D.C. Law 12- (Act 12-472), § 2(d), 45 DCR 7991.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-472) added this section.

Emergency act amendments. — For temporary addition of section, see § 2(d) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emergency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Legislative history of Law 12-(D.C. Act 12-472). — See note to § 24-495.1.

§ 24-495.2b. Health professionals transferring from District government employment to employment by a private operator.

A health professional shall remain covered by § 2-3301.4 if the following criteria are met:

(1) The health professional is transferred from employment by the District government to employment by a private operator to perform essentially the same services as the person performed while employed by the District government and continues to perform such services for the duration of his or her employment by a private operator; and

(2) The health professional is covered by § 2-3301.4. (June 3, 1997, D.C. Law 11-276, § 3b, as added _____, 1999, D.C. Law 12- (Act 12-472), § 2(e), 45 DCR 7991.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-472) added this section.

Emergency act amendments. — For temporary addition of section, see § 2(e) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emergency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Legislative history of Law 12-(D.C. Act 12-472). — See note to § 24-495.1.

§ 24-495.3. Inmates confined to CTF.

(a) An inmate confined in the CTF shall be deemed to be at all times in the legal custody of the Department of Corrections. Only the Department of Corrections shall have authority to transfer or assign inmates into or out of the CTF. All laws and regulations governing conduct of inmates, including, without limitation, Title 22 of the District of Columbia Code, shall apply to inmates confined to the CTF during such time as the CTF is operated by a private operator. All laws and regulations establishing penalties for offenses committed against correctional officers or other correctional employees, including, without limitation, the penalties provided for in § 22-505, shall apply mutatis mutandis to offenses committed against any private correctional officer or other employee of the private operator.

(b) An inmate confined in any privately-operated prison facility established pursuant to Subtitle C of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L. 105-33;

111 Stat. 712), shall be deemed to be at all times in the legal custody of the Federal Bureau of Prisons. Only the Federal Bureau of Prisons shall have authority to transfer or assign inmates into or out of the privately-operated prison facility. All laws and regulations governing conduct of inmates in Federal Bureau of Prisons facilities shall apply to inmates confined in any privately-operated prison facility during such time as the prison facility is operated by a private operator. All laws and regulations establishing penalties for offenses committed against correctional officers or other correctional employees shall apply wherever applicable to offenses committed against any private correctional officer or other employee of the private operator. (June 3, 1997, D.C. Law 11-276, § 4, 44 DCR 1416; _____, 1999, D.C. Law 12-(Act 12-472), § 2(f), 45 DCR 7991.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-472) added (b).

Temporary amendment of section. — Section 2(c) of D.C. Law 12-164 added (b).

Section 4 of D.C. Law 12-164 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Correctional Treatment Facility Emergency Amendment Act of 1998 (D.C. Act 12-315, March 31, 1998, 45 DCR 2126), § 2(c) of the Correctional Treatment Facility Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-388, June 29, 1998, 45 DCR 4625), and § 2(f) of the Correctional Treatment Facility Firearms Registration and Health Occupations Licensing Emergency Amendment Act of 1998 (D.C. Act 12-442, September 3, 1998, 45 DCR 6517).

Section 4 of D.C. Act 12-388 provides for the application of the act.

Legislative history of Law 11-276. — See note to § 24-495.1.

Legislative history of Law 12-164. — See note to § 24-495.1.

Legislative history of Law 12-(D.C. Act 12-472). — See note to § 24-495.1.

§ 24-495.4. Immunity from liability; indemnification insurance.

(a) The private operator shall protect, defend, indemnify, save, and hold harmless the District, its officers, agents, servants, employees, and volunteers from and against any and all claims, demands, expenses, and liability arising out of or relating to acts or omissions of the private operator, its agents, servants, subcontractors, and employees in the performance of its contract with the District regardless of whether any damage resulting from the private operator's act, omission, or default is caused in part by the District, and any and all costs, expenses, and attorneys fees incurred by the District as a result of any such claim, demand, or cause of action including, but not limited to, any and all claims arising from:

(1) Any breach or default on the part of the private operator in the performance of its duties and obligations under its contract with the District;

(2) Any services rendered by the private operator or by any person or firm performing or supplying services, materials, or supplies in connection with the performance of the private operator's contract with the District;

(3) Any person or firm injured or damaged by the private operator, its officers, agents, servants, subcontractors, or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under its contract with the District in a manner not authorized by the contract, or by federal or District statutes or regulations; and

(4) Any failure of the private operator, its officers, agents, servants, subcontractors, or employees to observe federal or District laws, including, but not limited to, the Constitution of the United States.

(b) The private operator shall not waive, release, or otherwise forfeit any possible defense the District may have regarding claims arising from or made in connection with the operation of the CTF by the private operator without the consent of the District. The private operator shall preserve all available defenses and cooperate with the District to make such defenses available to the maximum extent allowed by law.

(c) The private operator shall provide an adequate policy of insurance to cover the indemnification provided for in this section, including coverage for civil rights claims. The adequacy of the insurance policy shall be determined by a risk management or actuarial firm with demonstrated experience in public liability for state and municipal governments. The insurance policy shall provide that the District is named as an additional insured and that the District shall be sent any notice of cancellation or material alteration. (June 3, 1997, D.C. Law 11-276, § 5, 44 DCR 1416.)

Legislative history of Law 11-276. — See note to § 24-495.1.

§ 24-495.5. Exemptions from leasing and property laws.

(a) Notwithstanding §§ 1-336 and 9-401, the Mayor of the District of Columbia is authorized to sell and leaseback, in his discretion, for the best interests of the District of Columbia, the Correctional Treatment Facility, situated on Lot 800 of Square 1112, with a street address of 1901 E Street, S.E.

(b) Notwithstanding § 8-111, the Council of the District of Columbia approves the transfer from the United States government to the District of Columbia of jurisdiction over that portion of Lot 800 of Square 1112 upon which is situated the District of Columbia Correctional Treatment Facility, as shown on a plat to be drawn and filed in the Office of the Surveyor of the District of Columbia. (June 3, 1997, D.C. Law 11-276, § 6, 44 DCR 1416.)

Legislative history of Law 11-276. — See note to § 24-495.1.

CHAPTER 5. REHABILITATION OF ALCOHOLICS.

Sec.
24-523. Public health program; delegation of powers by Mayor.

§ 24-523. Public health program; delegation of powers by Mayor.

(a) The Mayor shall establish and maintain an effective public health program in the District of Columbia to provide a continuum of appropriate services to intoxicated persons and chronic alcoholics. Such program shall coordinate all District of Columbia services for intoxicated persons and chronic

alcoholics and shall include at least the following facilities which shall be available to both males and females:

* * * * *

(2) An inpatient extended care facility which shall have a capacity of not more than 800 beds and which shall provide intensive study, treatment, and rehabilitation of chronic alcoholics. Such facility shall not admit intoxicated persons; and

* * * * *

(June 3, 1997, D.C. Law 11-275, § 18, 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made stylistic correction at the end of (a)(2).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

CHAPTER 7. INTERSTATE AGREEMENT ON DETAINERS.

§ 24-701. Enactment.

Triggering of Article III 180-day requirement. — Defendant's letter to a New York prison official requesting that his District of Columbia detainer be resolved, was not sufficient to trigger the 180-day requirement set forth in Article III of this section. Fields v. United States, App. D.C., 698 A.2d 485 (1997).

Cited in Dobson v. United States, App. D.C., 711 A.2d 78 (1998).

CHAPTER 8. YOUTH REHABILITATION.

§ 24-801. Definitions.

No availability to defendants convicted of murder. — Unlike the former Federal Youth Corrections Act, the District of Columbia Youth Rehabilitation Act is not available to defendants convicted of murder. Veney v. United States, App. D.C., 681 A.2d 428 (1996).

Cited in Dantzler v. United States, App. D.C., 696 A.2d 1349 (1997); Douglas v. United States, App. D.C., 703 A.2d 1235 (1997).

§ 24-803. Sentencing alternatives.

Cross references. — As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

No availability to defendants convicted of murder. — Unlike the former Federal Youth Corrections Act, the District of Columbia Youth Rehabilitation Act is not available to defendants convicted of murder. Veney v. United States, App. D.C., 681 A.2d 428 (1996).

Comparison to former Federal Youth Corrections Act. — When viewing this Act as a whole, the District of Columbia Youth Rehabilitation Act reverses in important respects

the Federal Youth Corrections Act's tilt in favor of youth offender sentencing. Veney v. United States, App. D.C., 681 A.2d 428 (1996).

Statement of reasons. — A statement of reasons is explicitly required when a District of Columbia Youth Act sentence is imposed, but there is no comparable requirement that the judge explain his reasons for imposing an adult sentence. Veney v. United States, App. D.C., 681 A.2d 428 (1996).

Revocation of probation and imposition of adult sentence.

An adult sentence may be imposed if the record reflects that the judge was aware of the availability under the District of Columbia Youth Rehabilitation Act of youth offender treatment, that he considered that rehabilitative option, and that he rejected it. Veney v. United States, App. D.C., 681 A.2d 428 (1996).

Sentencing considerations. — The District of Columbia Youth Rehabilitation Act does not require a one-dimensional focus on the interests of the offender to the exclusion of the victim, his family and the law-abiding citizens of the community. Properly understood in the context of the entire Act, the reference in subsection (d) of this section to "benefit" to the defendant means a rehabilitational benefit sufficient to outweigh other applicable considerations. Veney v. United States, App. D.C., 681 A.2d 428 (1996).

No special limitation on sentencing. — This chapter imposes no special limitation on the duration of time that a youth offender can be incarcerated, and provides specifically for any sentence up to the maximum provided by law. Bragdon v. United States, App. D.C., 717 A.2d 878 (1998).

Consecutive sentences required. — Controlled by the guidelines of § 23-112, consecutive sentences are not only permissible under this chapter, but required unless the sentencing judge provides otherwise. Bragdon v. United States, App. D.C., 717 A.2d 878 (1998).

Cited in Rider v. United States, App. D.C., 687 A.2d 1348 (1996); Butler v. United States, App. D.C., 688 A.2d 381 (1996); White v. United States, App. D.C., 692 A.2d 1365 (1997); Hicks v. United States, App. D.C., 705 A.2d 636 (1997).

§ 24-806. Unconditional discharge sets aside conviction.

Cited in Veney v. United States, App. D.C., 681 A.2d 428 (1996).

CHAPTER 10. INTERSTATE CORRECTIONS COMPACT.

§ 24-1001. Interstate Corrections Compact.

Cited in Al Malik v. District of Columbia, App. D.C., 703 A.2d 1250 (1998).

CHAPTER 11. SEX OFFENDER REGISTRATION.

Sec.
24-1101. Definitions.
24-1102. Persons required to register.
24-1103. Establishment of the Sex Offender Registration Advisory Council.
24-1104. Duties of the Advisory Council.
24-1105. Duties of the Court.
24-1106. Duties of the Department of Corrections.
24-1107. Transfer of information to the Department and Federal Bureau of Investigation.
24-1108. Duties of the Board of Parole.
24-1109. Verification.
24-1110. Notification of changes of address.
24-1111. Registration for change of address to another state.
24-1112. Length of registration.
24-1113. Penalties.
24-1114. Transfer of information and central data base.
24-1115. Release of information.
24-1116. Absolute immunity for members of the Advisory Counsel; immunity for good faith conduct for others.
24-1117. Applicability.

§ 24-1101. Definitions.

For the purposes of this chapter, the term:

(1) "Advisory Council" means the Sex Offender Registration Advisory Council.

(2) "Anti-Sexual Abuse Act" means subchapter I of Chapter 41 of Title 22.

(3) "Board" means the Board of Parole.

(4) "Child" means any person under the age of 16.

(5) "Corrections" means the Department of Corrections.

(6) "Court" means the sentencing court, including any judge of the Superior Court of the District of Columbia to whom a sex offender's case may subsequently be reassigned.

(7) "Criminal offense against a victim who is a minor" means child sexual abuse or any sexual offense where the victim is a minor as both of these offenses are proscribed by the Anti-Sexual Abuse Act; sexual performances using minors, as proscribed by § 22-2012; kidnapping if the victim is a minor or abducting or enticing a minor for purposes of prostitution, as both of these offenses are proscribed by §§ 22-2101 and 22-2704; or attempt to commit any of the offenses delineated in this paragraph.

(8) "Day" or "days" means a calendar day or days.

(9) "Department" means the Metropolitan Police Department.

(10) "Mayor" means the Mayor of the District of Columbia.

(11) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(12) "Minor" means a person under the age of 18.

(13) "Predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(14) "Registrant" means an offender who is required to register under this chapter.

(15) "Sex offender" means a person who has been convicted in any jurisdiction of an offense which includes all of the essential elements of any of the offenses delineated in paragraphs (7) and (16) of this section.

(16) "Sexually violent offense" means first degree sexual abuse, or an aggravating circumstance of first degree sexual abuse, as provided by §§ 22-4102 and 22-4120(a)(3) and (6); assault with the intent to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse as used in § 22-501; murder while attempting to commit first degree sexual abuse as used in § 22-2401; any offense that has as its elements engaging in physical contact with another person with the intent to commit first degree sexual abuse or an aggravating cirumstance of first degree sexual abuse; or attempt to commit any of the offenses delineated in this paragraph.

(17) "Sexually violent predator" means a person who has been convicted or acquitted by reason of insanity in any jurisdiction of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. (June 3, 1997, D.C. Law 11-274, § 2, 44 DCR 1232.)

Legislative history of Law 11-274. — Law 11-274, the "Sex Offender Registration Act of 1996," was introduced in Council and assigned Bill No. 11-386, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-510 and transmitted to both Houses of Congress for its review. D.C. Law 11-274 became effective on June 3, 1997.

§ 24-1102. Persons required to register.

The following persons shall register a current address with the Department:

(1) A person who has been convicted in any jurisdiction of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense;

(2) A person who is a sexually violent predator; and

(3) A person who is released from confinement pursuant to § 22-3509. (June 3, 1997, D.C. Law 11-274, § 3, 44 DCR 1232.)

Section references. — This section is referred to in §§ 24-1106, 24-1109, and 24-1112.

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1103. Establishment of the Sex Offender Registration Advisory Council.

(a) There is established a Sex Offender Registration Advisory Council ("Advisory Council") that shall commence operations within 180 days of June 3, 1997. The Advisory Council shall consist of no fewer than 2 and no more than 5 members, one of whom shall be appointed as Chairperson. A quorum shall consist of 2 members. The members of the Advisory Council shall be appointed and serve under the following conditions:

(1) Members shall be nominated by the Mayor and confirmed by the Council.

(2) Members shall be experts in the fields of the behavior and treatment of sex offenders.

(3) Members shall serve a 3-year term, except that the Mayor may remove a member from the Advisory Council for cause before the expiration of the 3-year term.

(4) A member may continue to serve after the expiration of that member's term provided no successor has been appointed.

(b) Members shall receive no compensation, but may be reimbursed for actual expenses incurred in the performance of official duties, not to exceed $15 per day. (June 3, 1997, D.C. Law 11-274, § 4, 44 DCR 1232.)

Section references. — This section is referred to in § 1-633.7.

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1104. Duties of the Advisory Council.

(a) The Advisory Council shall develop guidelines and procedures to assess on a case-by-case basis the risk of a repeat offense and the threat posed to the public safety by the sex offender's release. Such guidelines shall include, but not be limited to, the following:

(1) Criminal history factors indicative of high risk of repeat offense, including:

(A) Whether the sex offender has a mental abnormality;

(B) Whether the sex offender's conduct was found to be characterized by repetitive and compulsive behavior, associated with drugs or alcohol;

(C) Whether the sex offender served the maximum term;

(D) Whether the sex offender committed the sex offense against a child;

(E) The age of the sex offender at the time of the first sex offense;

(F) The relationship between the sex offender and the victim;

(G) Whether the offense involved the use of a weapon, violence, or infliction of serious bodily injury; and

(H) The number, date, and nature of all prior offenses;

(2) Conditions of release that minimize risk of repeat offense, including, but not limited to, whether the sex offender is or will be under supervision; receiving counseling, therapy, or treatment; or residing in a home situation that provides guidance and supervision;

(3) Physical conditions that may minimize risk of repeat offense, including, but not limited to, advanced age or debilitating illness;

(4) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(5) The sex offender's response to treatment;

(6) Recent behavior, including, if applicable, behavior while confined;

(7) Recent threats or gestures against persons or expressions of intent to commit additional offenses; and

(8) Review of the victim impact statement.

(b) The Advisory Council shall make a recommendation to the Court, based on these guidelines, at least 5 days prior to the sentencing date as to whether the sex offender warrants the designation of sexually violent predator. In addition, the Advisory Council's recommendation shall include one of the following 3 levels of risk of repeat offense by the sex offender:

(1) If the risk of repeat offense is low, a level 1 designation shall be given to the sex offender.

(2) If the risk of repeat offense is moderate, a level 2 designation shall be given to the sex offender.

(3) If the risk of repeat offense is high and there exists a threat to the public safety, a level 3 designation shall be given to the sex offender.

(c) The Advisory Council shall make a recommendation to the Court, at least 60 days prior to the parole date of a sex offender, and, in the case of discharge or release of a sex offender, a recommendation to the appropriate authority at least 60 days prior to the discharge or release date, as to whether the sex offender still warrants the designation of sexually violent predator, and whether the sex offender should be classified at risk level 1, 2, or 3. (June 3, 1997, D.C. Law 11-274, § 5, 44 DCR 1232.)

Section references. — This section is referred to in § 24-1105.

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1105. Duties of the Court.

The duties of the Court are as follows:

(1) Upon conviction or a plea of guilty to an offense requiring registration under this chapter, the Court shall enter an order certifying that the defendant

is a sex offender. The Court shall also advise the sex offender of that person's duties pursuant to this chapter.

(2) The Court shall set a sentencing date that will afford the Advisory Council no fewer than 10 days to review the pre-sentence investigation report that shall be provided to the Advisory Council.

(3) Upon receipt of a recommendation by the Advisory Council pursuant to § 24-1104(b), the Court shall:

(A) Notify the registrant and the registrant's counsel of the Advisory Council's recommendation as to the registrant's risk level and whether the registrant is deemed a sexually violent predator. The registrant and the registrant's counsel shall have the right to inspect and copy the Advisory Council's recommendation, any written explanation for the recommendation, and all materials reviewed by the Advisory Council in reaching its conclusions;

(B) Notify the registrant and the registrant's counsel of the right to request a hearing before the Court, if the Advisory Council recommends designation as a sexually violent predator, or a designation at risk level 2 or 3;

(C) Conduct a hearing, if requested, at which the registrant shall be afforded an opportunity to contest the Advisory Council's recommendation and to present evidence, by proffer or otherwise;

(D) Determine whether the registrant:

(i) Is a sexually violent predator, or is no longer a sexually violent predator if the registrant was previously classified as such; and

(ii) Should be designated at risk level 1, 2, or 3; and

(E) Where the Court orders a sex offender released on probation, include in the order a provision requiring that the sex offender comply with the requirements of this chapter.

(4) At the sentencing of a sex offender, the court shall consider the recommendations of the Advisory Council in its determination of whether the offender is a sexually violent predator and the level of risk of repeat offense.

(5) The Court may grant relief from the requirements of registration upon petition by the registrant, provided that the registrant has already complied with the registration requirements of this chapter for a minimum of 10 years. Upon receipt of the petition for relief, the Court shall notify the Advisory Council and request an updated report pertaining to the sex offender. After receiving the report from the Advisory Council, the Court shall schedule a hearing to determine whether to grant or deny the relief sought. The Court may also consider the views of the victim prior to making a determination on the petition. The petition, if granted, shall not relieve the petitioner of the duty to register in the future upon conviction of any new offense requiring registration under this chapter, nor shall it relieve the petitioner, if that person is on parole, of the parolee's duty to comply with conditions of release set by the Board, including, but not limited to, registration and monitoring requirements. (June 3, 1997, D.C. Law 11-274, § 6, 44 DCR 1232.)

Section references. — This section is referred to in § 24-1112.

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1106. Duties of the Department of Corrections.

(a) Once a person who is required to register under § 24-1102 is released from prison on probation or parole, or upon the completion of a term of incarceration, the Department of Corrections ("Corrections") shall:

(1) Inform the registrant of the duty to register and the penalty for failure to register;

(2) Obtain the information required for registration;

(3) Inform the registrant of the duty to personally deliver any change of residential address to the Department in writing within 10 days;

(4) Inform the registrant that if he or she relocates to another state, the registrant shall register the new address with the local police district and with the designated law enforcement agency in the new state not later than 10 days after establishing residence in the new state;

(5) Require the registrant to read or have read, and to sign a form stating that the duty of the registrant under this chapter has been explained; and

(6) Obtain and record the following information:

(A) The registrant's name, all aliases used, date of birth, sex, race, height, weight, eye color, driver's license number, Social Security number, PDID and DCDC numbers, and home address or expected place of domicile;

(B) A photograph and set of fingerprints; and

(C) For registrants released on parole whether at the discretion of the Board or on mandatory parole, a detailed description of the offense for which the registrant was convicted, the date of conviction, and the sentence imposed.

(b) In addition to the requirements of subsection (a) of this section, in the case of a registrant described under § 24-1102(2), Corrections shall obtain and record information concerning any treatment received for the mental abnormality or personality disorder of the registrant. No right to treatment is created by this chapter. (June 3, 1996, D.C. Law 11-274, § 7, 44 DCR 1232.)

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1107. Transfer of information to the Department and Federal Bureau of Investigation.

Corrections shall, within 3 days after collection of information described in § 24-1106(a)(6), forward it to the Department. The Department shall immediately enter the information into the appropriate record system and notify the appropriate police district having jurisdiction where the person expects to reside. The appropriate authority shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation. (June 3, 1997, D.C. Law 11-274, § 8, 44 DCR 1232.)

Section references. — This section is referred to in § 24-1106.

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1108. Duties of the Board of Parole.

(a) The Board may establish or maintain any requirements for registration and reporting as conditions of parole for its parolees who are sex offenders,

provided that the frequency of reporting while on parole meets or exceeds the requirements of this chapter.

(b) Compliance with the Board's requirements shall not relieve a registrant of that registrant's duty to comply with the requirements of this chapter, except to the extent that the Board's requirements meet or exceed those requirements.

(c) In the event the registrant's term on parole is less than 10 years, in the case of a registrant designated at risk level 1; less than 15 years, in the case of a registrant designated at risk level 2; or less than life, in the case of a registrant designated at risk level 3, the Board shall inform the registrant that that person's duty to comply with this chapter shall not end until he or she completes the minimum registration term required by this chapter. The Board shall provide this information to the registrant:

(1) At the time of, or immediately after, the parolee's release on parole; and

(2) Upon the parolee's release from active supervision or upon completion of the parolee's maximum sentence. (June 3, 1997, D.C. Law 11-274, § 9, 44 DCR 1232.)

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1109. Verification.

(a) For a person required to register under § 24-1102(1), on each anniversary of the person's initial registration date during the period in which the person is required to register, the following applies:

(1) The Department shall mail a nonforwardable verification form to the registrant's last reported address, which shall contain the address of the registrant's local police station.

(2) The registrant shall return the verification form to the designated police station in person within 10 days after receipt of the form.

(3) The registrant shall sign the verification form, which shall certify that the registrant still resides at the address last reported to the Department.

(4) If the registrant fails to return the verification form in person to the designated police station within 10 days of receipt of the form, the registrant shall be in violation of this chapter unless the registrant proves that he or she has not relocated from the address of record and offers a reasonable and verifiable explanation for the failure to return the form timely and in person.

(b) For a person required to register under § 24-1102(2), the provisions of subsection (a) of this section shall be applied, except that such person shall return the verification form in person to the local police station every 90 days after the date of the initial release or commencement of parole. (June 3, 1997, D.C. Law 11-274, § 10, 44 DCR 1232.)

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1110. Notification of changes of address.

A registrant shall immediately report a change of address to the police district having jurisdiction where the registrant has been residing. If the registrant relocates to another state, the Department shall notify the law enforcement agency with which the registrant must register in the new state. The Department shall ensure that the registry is updated at least once a year and shall purge outdated addresses and include new addresses for all registrants. (June 3, 1997, D.C. Law 11-274, § 11, 44 DCR 1232.)

Temporary amendment of section. — Section 2 of D.C. Law 12-28 amended this section to read as follows:

"(a) A registrant shall immediately report a change of address to the police district having jurisdiction where the registrant has been residing.

"(b) A person who meets the registration requirements of this act and who moves into the District of Columbia from another jurisdiction shall register with the Department within 10 days of establishing a residence in the District of Columbia, or of re-establishing a residence in the District of Columbia if the person is a former District of Columbia resident.

"(c) If the registrant relocates to another state, the Department shall notify the law enforcement agency with which the registrant must register in the new state.

"(d) The Department shall ensure that the registry is updated promptly, and shall purge outdated addressees and shall include new addresses for all registrants."

Section 4(b) of D.C. Law 12-28 provides that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-(D.C. Act 12-386) amended this section to read as follows:

"(a) A registrant shall immediately report a change of address to the police district having jurisdiction where the registrant has been residing.

"(b) A person who meets the registration requirements of this act and who moves into the District of Columbia from another jurisdiction shall register with the Department within 10 days of establishing a residence in the District of Columbia, or of re-establishing a residence in the District of Columbia if the person is a former District of Columbia resident.

"(c) If the registrant relocates to another state, the Department shall notify the law enforcement agency with which the registrant must register in the new state.

"(d) The Department shall ensure that the registry is updated promptly, and shall purge outdated addresses and shall include new addresses for all registrants."

Section 4(b) of D.C. Law 12-(D.C. Act 12-386) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Sex Offender Registration Emergency Amendment Act of 1997 (D.C. Act 12-111, July 18, 1997, 44 DCR 4499), § 2 of the Sex Offender Registration Congressional Recess Emergency Amendment Act of 1997 (D.C. Act 12-150, September 29, 1997, 44 DCR 5767), § 2 of the Sex Offender Registration Emergency Amendment Act of 1998 (D.C. Act 12-367, June 5, 1998, 45 DCR 4041), § 2 of the Sex Offender Registration Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-477, October 28, 1998, 45 DCR 8008), and § 2 of the Sex Offender Registration Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-10, February 8, 1999, 46 DCR 2320).

Section 4 of D.C. Act 12-477 provided for the application of the act.

Section 4 of D.C. Act 13-10 provided for the application of the act.

Legislative history of Law 11-274. — See note to § 24-1101.

Legislative history of Law 12-(D.C. Act 12-386). — Law 12-(D.C. Act 12-386), the "Sex Offender Registration Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-386 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-386) became effective on _____.

§ 24-1111. Registration for change of address to another state.

(a) A registrant shall register the new address with a designated law enforcement agency in another state to which the registrant moves not later than 10 days after the registrant establishes residence in the new state.

(b) Efforts shall be made to apprise registrants relocating to the District of Columbia from other jurisdictions of the requirements under this chapter. These efforts may include, but are not limited to, distribution of notices by the Department to locations where registrants relocating to the District of Columbia from other jurisdictions may apply for driver's licenses, motor vehicle tags and inspections, housing, and other public assistance. (June 3, 1997, D.C. Law 11-274, § 12, 44 DCR 1232.)

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1112. Length of registration.

(a) A registrant designated at risk level 1 shall continue to register until 10 years have elapsed since the registrant was last released from prison, or until the expiration of the sentence being served on parole or the expiration of the term on probation, whichever is longer.

(b) A registrant designated at risk level 2 shall continue to register until 15 years have elapsed or until the expiration of the sentence being served on parole or the expiration of the term on probation, whichever is longer.

(c) A registrant designated at risk level 3 shall continue to register for the remainder of the natural life of that registrant.

(d) The specific registration requirements imposed on a person required to register under § 24-1102(2) may be terminated at the discretion of the Court if a determination is made in accordance with § 24-1105(3)(D)(i) that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense, except that no relief shall be granted until the registrant described under § 24-1102(2) has registered for a minimum of 10 years. (June 3, 1997, D.C. Law 11-274, § 13, 44 DCR 1232.)

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1113. Penalties.

(a) Any registrant who violates the requirements of this chapter shall be fined not more than $1,000 or imprisoned for not more than 6 months, or both. In the event the registrant convicted of violating this chapter has a prior conviction for failing to comply with this chapter, that person shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both.

(b) Failure to comply with the requirements of this chapter may also be the basis for revocation of parole or probation. (June 3, 1997, D.C. Law 11-274, § 14, 44 DCR 1232.)

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1114. Transfer of information and central data base.

The Department shall establish and maintain a central registry of all sexual offenders required to register. The Department shall prepare and distribute to

each of the district police stations a standard sex offender registration form and other relevant information for the registration process. (June 3, 1997, D.C. Law 11-274, § 15, 44 DCR 1232.)

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1115. Release of information.

Registrant information that the Department collects shall be treated as private information, except that:

(1) Information shall be disclosed to law enforcement agencies for law enforcement purposes;

(2) Information shall be disclosed to government agencies conducting confidential background checks; and

(3) Limited and relevant registration information shall be disclosed to selected segments of the public as soon as it is received by the Department in cases where the release of that information is mandated under this chapter to protect the public from individual registrants. The identity of the victim of an offense requiring registration shall not be released. The extent of the information disclosed and the population to whom disclosure is made must directly relate to the potential level of danger posed by the registrant. The Department shall apply the following guidelines in determining the scope of disclosure made under this paragraph:

(A) If a registrant is assessed as presenting a low risk to the community (level 1), the Department shall maintain information regarding the registrant within the agency and shall disclose it to other law enforcement agencies. The Department shall also disclose relevant and necessary information to all victims of the registrant and to any witnesses to the offense for which the registrant was convicted.

(B) If a registrant is assessed as presenting an intermediate risk to the community (level 2), the Department shall make all level 1 disclosures and shall also disclose relevant and necessary information to appropriate public and private educational and day care entities and other institutions and organizations that primarily serve individuals likely to be victimized by the registrant.

(C) If a registrant is assessed as presenting a high risk to the community (level 3), the Department shall make all level 1 and 2 disclosures and may also disclose relevant and necessary information to other members of the community to whom the registrant may pose a direct or potential threat. (June 3, 1997, D.C. Law 11-274, § 16, 44 DCR 1232.)

Legislative history of Law 11-274. — See note to § 24-1101.

§ 24-1116. Absolute immunity for members of the Advisory Counsel; immunity for good faith conduct for others.

(a) Members of the Advisory Council, employees of the District government who assist them, and the District government with respect to the members of

the Advisory Council and any employees of the government who assist them, shall be:

(1) Absolutely immune from civil liability for any act or omission under this chapter; and

(2) Immune from other liability for good faith conduct under this chapter.

(b) Except as provided in subsection (a) of this section, law enforcement agencies and their employees, and the District and its employees, shall be immune from liability for good faith conduct under this chapter. (June 3, 1997, D.C. Law 11-274, § 17, 44 DCR 1232; Apr. 20, 1999, D.C. Law 12-250, § 2, 46 DCR 1118.)

Effect of amendments. — DC. Law 12-250 rewrote the section.

Temporary amendment of section. — Section 2 of D.C. Law 12-118 rewrote the section.

Section 4(b) of D.C. Law 12-118 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-262 rewrote the section.

Section 4(b) of D.C. Law 12-262 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Sex Offender Registration Emergency Amendment Act of 1998 (D.C. Act 12-282, February 25, 1998, 45 DCR 1720), § 2 of the Sex Offender Registration Immunity from Liability Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-365, June 5, 1998, 45 DCR 3880), and § 2 of the Sex Offender Registration Immunity From Liability Second Emergency Amendment Act of 1998 (D.C. Act 12-540, December 24, 1998, 45 DCR 301).

Section 4 of D.C. Act 12-540 provides for the application of the act.

Legislative history of Law 11-274. — See note to § 24-1101.

Legislative history of Law 12-118. — Law 12-118, the "Sex Offender Registration Immunity From Liability Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-525. The Bill was adopted on first and second readings on February 3, 1998, and March 3, 1998, respectively. Signed by the Mayor on March 18, 1998, it was assigned Act No. 12-317 and transmitted to both Houses of Congress for its review. D.C. Law 12-118 became effective on June 11, 1998.

Legislative history of Law 12-250. — Law 12-250, the "Sex Offender Registration Immunity From Liability Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-524, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-589 and transmitted to both Houses of Congress for its review. D.C. Law 12-250 became effective on April 20, 1999.

Legislative history of Law 12-262. — Law 12-262, the "Sex Offender Registration Immunity From Liability Second Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-881. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-616 and transmitted to both Houses of Congress for its review. D.C. Law 12-262 became effective on April 20, 1998.

§ 24-1117. Applicability.

(a) The requirements of this chapter shall apply to sex offenders who are released from confinement, placed on probation or parole, or who relocate to the District of Columbia on or after June 3, 1997.

(b) The duty to register under this chapter shall not be applicable to any sex offender whose conviction for an offense requiring registration was reversed upon appeal or who was pardoned on the grounds of innocence by the governor of any state.

(c) Notwithstanding any other provision of this chapter, and subject to the availability of funds, the Court may at any time:

(1) Direct the Advisory Council to make an assessment and recommendation concerning any offender who is required to register under this chapter;

(2) Order a mental examination of any offender who is required to register under this chapter, for the purpose of assessing risk under the provisions of this chapter; and

(3) Make the determinations described in § 24-1105(3)(D), in conformity with § 24-1105(3)(A) through (C). (June 3, 1997, D.C. Law 11-274, § 18, 44 DCR 1232; Apr. 27, 1999, D.C. Law 12-270, § 2, 46 DCR 1111.)

Effect of amendments. — D.C. Law 12-270 added (c).

Temporary amendment of section. — Section 2 of D.C. Law 12-197 added (c).

Section 5(b) of D.C. Law 12-197 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Emergency Amendment Act of 1998 (D.C. Act 12-427, July 29, 1998, 45 DCR 5725), § 2 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-508, November 4, 1998, 45 DCR 9174), and § 2 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-9, February 8, 1999, 46 DCR 2317).

Section 5 of D.C. Act 12-508 provides for the application of the act.

Section 5 of D.C. Act 13-9 provides for the application of the act.

Legislative history of Law 11-274. — See note to § 24-1101.

Legislative history of Law 12-197. — Law 12-197, the "Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-699. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 8, 1998, it was assigned Act No. 12-474 and transmitted to both Houses of Congress for its review. D.C. Law 12-197 became effective on March 26, 1999.

Legislative history of Law 12-270. — Law 12-270, the "Sex Offender Registration Risk Assessment Clarification Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-700, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-586 and transmitted to both Houses of Congress for its review. D.C. Law 12-270 became effective on April 27, 1999.

CHAPTER 12. TRANSFER OF PRISON SYSTEM TO FEDERAL AUTHORITY.

Subchapter I. Corrections.

Sec.

Subchapter II. Sentencing.

Subchapter III. Offender Supervision and Parole.

Sec.

Subchapter IV. Special Provisions for Trustees.

Subchapter I. Corrections.

§ 24-1201. Bureau of prisons.

(a) *Felons sentences pursuant to the truth-in-sentencing requirements.* — Not later than October 1, 2001, any person who has been sentenced to incarceration pursuant to the District of Columbia Code or the truth-in-sentencing system as described in § 24-1211 shall be designated by the Bureau of Prisons to a penal or correctional facility operated or contracted for by the Bureau of Prisons, for such term of imprisonment as the court may direct. Such persons shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States consistent with the sentence imposed.

(b) *Felons sentenced pursuant to the D.C. Code.* — Notwithstanding any other provision of law, not later than December 31, 2001, the Lorton Correctional Complex shall be closed and the felony population sentenced pursuant to the District of Columbia Code residing at the Lorton Correctional Complex shall be transferred to a penal or correctional facility operated or contracted for by the Bureau of Prisons. Such persons shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States consistent with the sentence imposed, and the Bureau of Prisons shall be responsible for the custody, care, subsistence, education, treatment and training of such persons.

(c) *Privatization.* —

(1) *Transition of inmates from Lorton.* — The Bureau of Prisons shall house, in private contract facilities:

(A) At least 2000 District of Columbia sentenced felons by December 31, 1999; and

(B) At least 50 percent of the District of Columbia sentenced felony population by September 30, 2003.

(2) *Duties of Deputy Attorney General.* — The Deputy Attorney General shall

(A) Be responsible for overseeing Bureau of Prisons privatization activities; and

(B) Submit a report to Congress on October 1 of each year detailing the progress and status of compliance with privatization requirements.

(3) *Duties of Attorney General.* — The Attorney General shall:

(A) Conduct a study of correctional privatization, including a review of relevant research and related legal issues, and comparative analysis of the cost effectiveness and feasibility of private sector and Federal, State, and local governmental operation of prisons and corrections programs at all security levels; and

(B) Submit a report to Congress no later than one year after August 5, 1997

(d) *Site acquisition and construction.* — In order to house the District of Columbia felony inmate population the Bureau of Prisons shall acquire land, construct and build new facilities at sites selected by the Bureau of Prisons, or contract for appropriate bed space, but no facilities may be built on the grounds of the Lorton Reservation.

(e) *National capital planning.* — Notwithstanding any other provision of law, the requirements of the National Capital Planning Act of 1952 (40 U.S.C.

71 et seq.) shall not apply to any actions taken by the Bureau of Prisons or its agents or employees.

(f) *Department of Corrections authority.* — The District of Columbia Department of Corrections shall remain responsible for the custody, care, subsistence, education, treatment, and training of any person convicted of a felony offense pursuant to the District of Columbia Code and housed at the Lorton Correctional Complex until December 31, 2001, or the date on which the last inmate housed at the Lorton Correctional Complex is designated by the Bureau of Prisons, whichever is earlier.

(g) *Lorton Correctional Complex.* —

(1) *Transfer of functions.* —

(A) Notwithstanding any other provision of law, to the extent the Bureau of Prisons assumes functions of the Department of Corrections under this subtitle, the Department is no longer responsible for such functions and the provisions of §§ 24-441 and 24-442, that apply with respect to such functions are no longer applicable.

(B) Contingent on the General Services Administration (GSA) receiving the necessary appropriations to carry out the requirements of this paragraph and subsection (g), and notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 471 et seq.), not later than 60 days after the date of enactment of the Lorton Technical Corrections Act of 1998, any property on which the Lorton Correctional Complex is located shall be transferred to the GSA.

(C) Not later than one year after the date of enactment of the Lorton Technical Corrections Act of 1998, Fairfax County shall submit a reuse plan that complies with all requisite approvals to the Administrator of General Services, that aims to maximize use of the land for open space, park land, or recreation, while delineating permissible or required uses, potential development densities, and any time limits on such development factors of the property on which the Lorton Correctional Complex is located.

(D) Not later than 180 days after the date of enactment of the Lorton Technical Corrections Act of 1998, the Secretary of the Interior shall notify GSA of any property it requests to be transferred to the Department of the Interior for the purpose of a land exchange by the United States Fish and Wildlife Service within the Commonwealth of Virginia or such other purposes consistent with the reuse plan developed by Fairfax County as the Secretary may request. The Administrator of General Services shall approve the Secretary's request to the extent that the request is consistent with the reuse plan developed by Fairfax County and does not result in a significant reduction in the marketability or value of any remaining property. The Administrator of General Services shall coordinate with the Secretary of the Interior to resolve any conflicts presented by the Department of the Interior's request and shall transfer the property to the Department of the Interior at no cost.

(E) Any property not transferred to the Department of the Interior under subparagraph (D) shall be disposed of according to paragraphs (2) and (4).

(2) *Transfer of land.* —

(A) *In general.* —

(i) *Fairfax County Water Authority.* — 150 acres of parcel 106-4-001-54 located west of Ox Road (State Route 123) on which the Lorton

Correctional Complex is located shall be transferred, without consideration, to the Fairfax County Water Authority of Fairfax, Virginia.

(ii) *Fairfax County Parks Authority.* — Any acres of parcel 106-4-001-54 located west of Ox Road (State Route 123) on which the Lorton Correctional Complex is located not transferred under sub-subparagraph (i) shall be assigned to the Department of the Interior, National Park Service, for conveyance to the Fairfax County Parks Authority for recreational purposes pursuant to the section 203(k)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(2)).

(B) Condition of transfer.

(i) *Water services.* — The United States Government shall not transfer any parcels under this paragraph unless the Fairfax County Water Authority certifies that it will continue to provide water services to the Lorton Correctional Complex at the rate it provided water services prior to the transfer.

(ii) *Restriction on transfer.* — No Federal agency may transfer the property under this paragraph until the prospective recipient of the property provides to such agency —

(I) a land description survey suitable for transferring property under Virginia law; and

(II) any necessary surveys to determine the presence of any hazardous substances, contaminants or pollutants.

(iii) *Lorton Correctional Complex.* — The Lorton Correctional Complex shall remain available for the District of Columbia Department of Corrections to house District of Columbia felony inmates until the last inmate at the Complex has been designated by the Bureau of Prisons or until December 31, 2003 [December 31, 2001], whichever is earlier.

(C) *Authorization.* — The General Services Administration and the National Park Service is authorized to expend any funds necessary to ensure that the transfer or conveyance under subparagraph (A) of this paragraph complies with all applicable environmental and historic preservation laws.

(3) *Water mains.* — Any water mains located on or across the Lorton Correctional Complex on the date of the transfers under paragraph (2) of this subsection, that are owned by the Fairfax County Water Authority and provide water to the public, shall be permitted to remain in place, and shall be operated, maintained, repaired, and replaced by the Fairfax County Water Authority or a successor agency furnishing water to the public in Fairfax County or adjacent jurisdictions, but shall not interfere with operations of the Lorton Correctional Complex.

(4) *Conditions on Transfer of Lorton Property East of Ox Road (State Route 123).* —

(A) *In General.* — With respect to property east of Ox Road (State Route 123) on which the Lorton Correctional Complex is located, the Administrator of General Services shall—

(i) cooperate with the District of Columbia Corrections Trustee to determine property necessary for the Trustee to maintain the security of the Lorton Correctional Complex until its closure;

(ii) prepare a report of title, complete a property description, provide protection and maintenance, conduct an environmental assessment of the

property to determine the extent of contamination, complete National Environmental Policy Act of 1969 (42 U.S.C. § 4331 et seq.) and National Historic Preservation Act (16 U.S.C. § 470 et seq.) processes for closure and disposal of the property, and provide an estimate of the cost for remediation and contingent on receiving the necessary appropriations complete the remediation in compliance with applicable federal and state environmental laws;

(iii) develop a disposition strategy incorporating the Fairfax County reuse plan and the Department of Interior's land transfer request, and resolve conflicts between the plan and the transfer request, or between the reuse plan, the transfer request and the results of the environmental studies;

(iv) negotiate with any entity that has a lease, agreement, memorandum of understanding, right-of-way, or easement with the District of Columbia to occupy or utilize any parcels of such property on the date of the enactment of this title, to perfect or extend such lease, agreement, memorandum of understanding, right-of-way, or easement;

(v) transfer any property identified for use for open space, park land, or recreation in the Fairfax County reuse plan to the Northern Virginia Regional Park Authority, the Fairfax County Park Authority, or another public entity, subject to the condition that the recipient use the conveyed property only for open space, park land, or recreation and that the transfer be at fair market value considering the highest and best use of the property to be open space, park land, and recreation;

(vi) not later than 60 days after the property is transferred to the General Services Administration, transfer at fair market value the six-acre parcel east of Shirley Highway on Interstate 95 to Amtrak, subject to such terms and conditions as the Administrator determines to be in the best interest of the United States;

(vii) dispose of any parcels not reserved by the Department of the Interior and not otherwise addressed under this subparagraph at fair market value, subject to such terms and conditions as the Administrator determines to be in the best interest of the United States;

(vii) deposit any proceeds from the sale of property on which the Lorton Correctional Complex is located into a special fund established in the treasury for purposes of covering real property utilization and disposal related expenses, including environmental compliance and remediation for the Lorton Correctional Complex until all property has been conveyed; and

(ix) deposit any remaining funds in the Policy and Operations appropriation account of the General Services Administration to be used for real property utilization and disposal activities until expended.

(B) *Report.* — Not later than 90 days after the date of the receipt of the Fairfax County reuse plan and the Department of the Interior property transfer request by the Administrator of General Services, the Adminstrator shall report to the Committees on Appropriations and Government Reform and Oversight of the House of Representatives, and the Committees on Appropriations and Governmental Affairs of the Senate on plans to comply with the terms of this paragraph and any estimated costs associated with compliance.

(C) *Authorization.* — There is authorized to be appropriated such sums as are necessary from the general funds of the Treasury, to remain available

until expended, to the Policy and Operations appropriation account of the General Services Administration for the real property utilization and disposal activities in carrying out the provisions of this title.

(5) *Jurisdiction.* — Any property disposed of according to paragraphs (2) and (4) shall be under the jurisdiction of the Commonwealth of Virginia. Any development of such property and any property transferred to the Department of the Interior for exchange purposes shall comply with any applicable planning and zoning requirements of Fairfax County and the Fairfax County reuse plan.

(h) *District of Columbia Corrections Information Council.* —

(1) *Establishment.* — There is established a council to be known as the District of Columbia Correction Information Council (hereafter referred to as "Council".

(2) *Membership.* — The Council shall be composed of 3 members appointed as follows:

(A) Two individuals appointed by the mayor of the District of Columbia.

(B) One individual appointed by the Council of the District of Columbia.

(3) *Compensation.* — Members of the Council may not receive pay, allowances, or benefits by reason of their service on the Council.

(4) *Duties.* — The Council shall report to the Director of the Bureau of Prisons with advice and information regarding matters affecting the District of Columbia sentenced felon population.

(i) *Timing of inmate transfers.* — As soon as practicable after August 5, 1997, the Director of the Bureau of Prisons shall begin the transferring of inmates to Bureau of Prison or private contract facilities required by this section. (Aug. 5, 1997, 111 Stat. 734, Pub. L. 105-33, § 11201; Nov. 19, 1997, 111 Stat. 734, Pub. L. 105-100, § 157(e)(2); Oct. 21, 1998, 112 Stat. 2681-600, Pub. L. 105-277, § 141.)

Effect of amendments. — Section 157(e)(2) of Pub. L. 105-100, 111 Stat. 2186, in (g)(2)(A)(ii), substituted "Fairfax County Parks Authority" for "Fairfax County Department of Parks and Recreation."

Section 141 of Pub. L. 105-277, 112 Stat. 2681-600, designated the existing language of (g)(1) as (g)(1)(A) and deleted the former second sentence of that paragraph; added (g)(1)(B) through (E); redesignated former (g-1) and (h) as present (h) and (i), respectively; and added (g)(4) and (5).

Effective date of Title XI of Pub. L. 105-33. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

References in text. — Section 1604(f)(2)(A) of Pub. L. 105-34, 111 Stat. 1099, provides that "section 11201(g)(2)(B)(iii) of the Balanced Budget Act of 1997 shall apply as if the reference in such section to 'December 31, 2003' were a reference to 'December 31, 2001.'"

§ 24-1202. Corrections Trustee.

(a) *Appointment and removal of trustee.* —

(1) *Appointment.* — Pursuant to the Federal Government's assumption of responsibility for persons convicted of a felony offense under the District of Columbia Code, the Attorney General, in consultation with the Chairman of the District of Columbia Financial Responsibility and Management Assistance

Authority (hereafter in this chapter referred to as the "D.C. Control Board"), the Mayor of the District of Columbia, the District of Columbia Council, and the District of Columbia judiciary, shall select a Corrections Trustee, who shall be an independent officer of the government of the District of Columbia, to oversee financial operations of the District of Columbia Department of Corrections until the Bureau of Prisons has designated all felony offenders sentenced under the District of Columbia Code to a penal or correctional facility operated or contracted for by the Bureau of Prisons under § 24-1201.

(2) *Removal.* — The Corrections Trustee may be removed by the Mayor with the concurrence of the Attorney General. The Attorney General shall have the authority to remove the Corrections Trustee for misfeasance or malfeasance in office. At the request of the Corrections Trustee, the District of Columbia Financial Responsibility and Management Assistance Authority may exercise any of its powers and authorities on behalf of the Corrections Trustee.

(b) *Duties of trustee.* — Beginning on the date of appointment and continuing until the felony population sentenced pursuant to the District of Columbia Code residing at the Lorton Correctional Complex is transferred to a penal or correctional facility operated or contracted for by the Bureau of Prisons, the Corrections Trustee shall carry out the following responsibilities (notwithstanding any law of the District of Columbia to the contrary):

(1) Exercise financial oversight over the District of Columbia Department of Corrections and allocate funds as enacted in law or as otherwise allocated, including funds for short term improvements which are necessary for the safety and security of staff, inmates and the community.

(2) Purchase any necessary goods or services on behalf of the District of Columbia Department of Corrections consistent with Federal procurement regulations as they apply to the Bureau of Prisons.

(c) *Funding.* —

(1) *In general.* — Funds available for the Corrections Trustee, staff and all necessary and appropriate operations shall be made available to the extent provided in appropriations acts to the Corrections Trustee. Funding requests shall be proposed by the Corrections Trustee to the President and Congress for each Fiscal Year.

(2) *Reimbursement to Bureau of Prison.* — Upon receipt of Federal funds, the Corrections Trustee shall immediately provide an advance reimbursement to the Bureau of Prisons of all funds identified by the Congress for construction of new prisons and major renovations, which shall remain available until expended. The Bureau of Prisons shall be responsible and accountable for determining how these funds shall be used for renovation and construction, including type, security level, and location of new facilities.

(3) *Accountability and reports.* — The District of Columbia Department of Corrections and the Bureau of Prisons shall maintain accountability for funds reimbursed from the Corrections Trustee, and shall provide expense reports by project at the request of the Corrections Trustee.

(d) *Compensation and detailees.* — The Corrections Trustee shall be compensated at a rate not to exceed the basic pay payable for Level IV of the Executive Schedule. The Corrections Trustee may appoint and fix the pay of additional staff without regard to the provisions of the District of Columbia

Code governing appointments and salaries, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates. Upon request of the Corrections Trustee, the head of any Federal department or agency may, on a reimbursable or non reimbursable basis, provide services and detail any personnel of that department or agency to the Corrections Trustee to assist in carrying out his duties.

(e) *Procurement and judicial review.* — The provisions of the District of Columbia Code governing procurement shall not apply to the Corrections Trustee. The Corrections Trustee may seek judicial enforcement of his authority to carry out his duties.

(f) *Preservation of retirement and certain other rights of federal employees who become employed by the Corrections Trustee.* —

(1) *In general.* — A Federal employee who, within 3 days after separating from the Federal Government, is appointed Corrections Trustee or becomes employed by the Corrections Trustee.

(A) shall be treated as an employee of the Federal Government for purposes of chapters 83, 84, 87, and 89 of title 5 of the United States Code; and

(B) if, after serving with the Trustee, such employee becomes reemployed by the Federal Government, shall be entitled to credit for the full period of such individual's service with the Trustee, for purposes of determining the applicable leave accrual rate.

(2) *Regulations.* — The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this subsection. (Aug. 5, 1997, 111 Stat. 737, Pub. L. 105-33, § 11202.)

Sick Leave Buyout for Department of Corrections Employees. — Section 8 of Pub. L. 105-274, 112 Stat. 2428, the District of Columbia Courts and Justice Technical Corrections Act of 1998, provides that notwithstanding any provision of District of Columbia law, the Corrections Trustee appointed pursuant to section 11202 of the Balanced Budget Act of 1997 may set conditions and may provide that an employee of the District of Columbia Department of Corrections who meets such conditions will receive a lump-sum payment for his or her accumulated and accrued sick leave, if the employee is separated involuntarily and is not subsequently employed, without a break in service of more than 3 days, by the Bureau of Prisons or another Federal agency. The lump-sum payment for sick leave shall be calculated by multiplying 50 percent of the employee's rate of basic pay, exclusive of additional payments of any kind, by the number of hours of accumulated sick leave to the employee's credit at the time of separation. The lump-sum payment shall be considered pay for taxation purposes only and shall not be used to confer any other benefit to the employee.

§ 24-1203. Priority consideration for employees of the District of Columbia.

(a) *Establishment.* — As soon as practicable after appointment, the Bureau of Prisons, working with the Corrections Trustee, shall establish a priority consideration program to facilitate employment placement for employees of the District of Columbia Department of Corrections who are scheduled to be separated from service as a result of closing the Lorton Correctional Complex.

(b) *Provisions.* — The priority consideration program shall include provisions under which a vacant federal correctional institution position established as a result of this Act and identified for external hiring shall not be filled by the appointment of any individual from outside of the District of Columbia

Department of Corrections if there is available any interested applicant within the District of Columbia Department of Corrections who meets all qualification and suitability requirements for Bureau of Prisons law enforcement positions, including those related to criminal history, educational experience and level of functions, drug use, and work-related misconduct. The priority consideration program shall also include provisions under which an employee described in subsection (a) of this section who has not been appointed to a Federal Bureau of Prisons law enforcement position and who applies for another Federal position in the competitive service shall receive priority consideration and may be given a competitive service appointment noncompetitively to such a competitive service position. The Director of the Bureau of Prisons may provide a relocation allowance to any individual who is hired by the Director under the program established under this section for a position outside of the Washington Metropolitan Area. Such program shall terminate one year after the closing of the Lorton Correctional Complex. (Aug. 5, 1997, 111 Stat. 738, Pub. L. 105-33, § 11203; Oct. 21, 1998, 112 Stat. 2424, Pub. L. 105-274, §§ 5(a), (b).)

Effect of amendments. — Public Law 105-274, in (b), rewrote the second sentence and inserted the third sentence.

Effective date; treatment of individuals given priority prior to enactment. — Section 5(c) of Pub. L. 105-274, 112 Stat. 2424, provides that:

(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) Individuals who have been appointed with excepted service appointments under section 11203(b) of the Balanced Budget Act of 1997 prior to the date of the enactment of this Act shall be converted noncompetitively to competitive service appointments in their current positions.

References in text. — "This Act," referred to in (b), is the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

§ 24-1204. [Reserved].

§ 24-1205. Liability for and litigation authority of corrections trustee.

(a) *Liability.* — The District of Columbia shall defend any civil action or proceeding brought in any court or other official Federal, state, or municipal forum against the Corrections Trustee, or against the District of Columbia or it officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding, if the action or proceeding arises from:

(1) An inmate's confinement with the District of Columbia Department of Corrections;

(2) The District of Columbia's operation or management of the buildings, facilities, or lands comprising the Lorton property; or

(3) The District of Columbia's operations or activities occurring on any property not specifically transferred to the administrative control of the Federal Government pursuant to this chapter.

(b) *Litigation.* —

(1) *Corporation counsel.* — Subject to paragraph (2) of this subsection, the Corporation Counsel of the District of Columbia shall provide litigation services to the Corrections Trustee, except that the Trustee may instead elect, either generally or in relation to particular cases or classes of cases, to hire

necessary staff and personnel or enter into contracts for the provision of litigation services at the Trustee's expense.

(2) *Attorney General.* —

(A) *In general.* — Notwithstanding paragraph (1) of this subsection, with respect to any litigation involving the Corrections Trustee, the Attorney General may:

(i) Direct the litigation of the Trustee, and of the District of Columbia on behalf of the Trustee; and

(ii) Provide on a reimbursable or non-reimbursable basis litigation services for the Trustee at the Trustee's request or on the Attorney General's own initiative.

(B) *Approval of settlement.* — With respect to any litigation involving the Corrections Trustee, the Trustee may not agree to any settlement involving any form of equitable relief without the approval of the Attorney General. The Trustee shall provide to the Attorney General such notice and reports concerning litigation as the Attorney General may direct.

(C) *Discretion.* — Any decision to exercise any authority of the Attorney General under this subsection shall be in the sole discretion of the Attorney General and shall not be reviewable in any court.

(c) *Limitation.* — Nothing in this section shall be construed:

(1) As a waiver of sovereign immunity, or as limiting any other defense or immunity that would otherwise be available to the United States, the District of Columbia, their agencies, officers, employees, or agents; or

(2) To obligate the District of Columbia to represent or indemnify the Corrections Trustee or any officer, employee, or agent where the Trustee (or any person employed by or acting under the authority of the Trustee) acts beyond the scope of his authority. (Aug. 5, 1997, 111 Stat. 739, Pub. L. 105-33, § 11205.)

§ 24-1206. Permitting expenditure of funds to carry out certain sewer agreement.

Notwithstanding the fourth sentence of § 47-304, the District of Columbia is authorized to obligate or expend such funds as may be necessary during a fiscal year (beginning with fiscal year 1997) to carry out the Sewage Delivery System and Capacity Purchase Agreement between Fairfax County and the District of Columbia with respect to Project Number K00301, without regard to the amount appropriated for such purpose in the budget of the District of Columbia for the fiscal year. (Aug. 5, 1997, 111 Stat. 740, Pub. L. 105-33, § 11206.)

Subchapter II. Sentencing.

§ 24-1211. Truth in sentencing commission.

(a) *Establishment.* — There is established as an independent agency of the District of Columbia a District of Columbia Truth in Sentencing Commission (hereafter in this chapter referred to as "the Commission"), which shall consist of 7 voting members. The Attorney General, or the Attorney General's

designee, shall be the chairperson of the Commission and shall have the duty to convene meetings of the Commission to ensure that it fulfills its responsibilities under this Act. The members shall serve for the life of the Commission and shall be subject to removal only for neglect of duty, malfeasance in office, or other good cause shown.

(b) *Membership.* — The members of the Commission shall have knowledge and responsibility with respect to criminal justice matters. Two members of the Commission shall be judges of the Superior Court of the District of Columbia, and shall be appointed by the chief judge of that court; one member shall be a representative of the District of Columbia Council and shall be appointed by the chairperson or chairperson pro temp of the Council; one member shall be a representative of the executive branch of the District of Columbia government with official responsibilities for criminal justice matters in the District of Columbia and shall be appointed by the Mayor of the District of Columbia; one member shall be a representative of the District of Columbia Public Defender Service and shall be appointed by the Director of such Service; and one member shall be a representative of the United States Attorney for the District of Columbia and shall be appointed by the United States Attorney. A representative of the Federal Bureau of Prisons and a representative of the office of Corporation Counsel of the District of Columbia shall each serve as a nonvoting, ex officio member.

(c) *Vacancy.* — Any vacancy in the Commission shall be filled in the same manner as the original appointment. Members of the Commission shall receive no compensation for their services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission, but not in excess of the maximum amounts authorized under section 456 of title 28, United States Code. (Aug. 5, 1997, 111 Stat. 740, Pub. L. 105-33, § 11211.)

References in text. — "This Act," referred to in (a), is the the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

§ 24-1212. General duties, powers, and goals of commission.

(a) *Recommendations.* — The Commission shall, within 180 days after the enactment of this act, make recommendations to the District of Columbia Council for amendments to the District of Columbia Code with respect to the sentences to be imposed for all felonies committed on or after 3 years after August 5, 1997.

(b) *Contents of recommendations.* — Such recommendations shall:

(1) As to all felonies described in subsection (h) of this section, meet the truth in sentencing standards of 20104(a)(1) of the Violent Crime Control and Law Enforcement Act of 1994;

(2) As to all felonies ensure that:

(A) An offender will have a sentence imposed that —

(i) Reflects the seriousness of the offense and the criminal history of the offender; and

(ii) Provides for just punishment, affords adequate deterrence to potential future criminal conduct of the offender and others, and provides the

offender with needed educational or vocational training, medical care, and other correctional treatment;

(B) Good time shall be calculated pursuant to section 3624 of title 18, United States Code; and

(C) An adequate period of supervision will be imposed to follow release from the imprisonment.

(c) *Death penalty.* — The Commission shall not have the power to recommend a sentence of death for any offense nor for any offense a term of imprisonment less than that prescribed by the D.C. Code as a mandatory minimum sentence.

(d) *Other features of recommendations.* — The Commission shall ensure that its recommendations:

(1) Will be neutral as to the race, sex, marital status, ethnic origin, religious affiliation, national origin, creed, socioeconomic status, and sexual orientation of offenders;

(2) Will include provisions designed to maximize the effectiveness of the drug court of the Superior Court of the District of Columbia; and

(3) Will be fully consistent with all other provisions of this act, including provisions relating to the administration of probation, parole, and supervised release for District of Columbia Code offenders.

(e) *Vote; termination.* — The recommendations of the Commission required under subsections (a) through (d) of this section shall be adopted by a vote of not less than 6 of the members and when made shall be transmitted forthwith to the District of Columbia Council The Commission shall cease to exist 90 days after the transmittal of recommendations to the Council or on the last date on which timely recommendations may be made if the Commission is unable to agree on such recommendations.

(f) *Recommendations for implementation.* — In fulfilling its responsibilities, the Commission may adopt by a vote of not less than 6 of the members and transmit to the Superior Court of the District of Columbia recommended rules and principles for determining the sentence to be imposed, including:

(1) Whether to impose a sentence of probation, a term of imprisonment and/r a fine, and the amount or length thereof, and including intermediate sanctions in appropriate cases; and

(2) Whether multiple sentences of terms of imprisonment should run concurrently or consecutively.

(g) *Powers.* — The Commission is authorized:

(1) To hold hearings and call witnesses that might assist the Commission in the exercise of its powers;

(2) To perform such other functions as may be necessary to carry out the purposes of this section; and

(3) Except as otherwise provided, to conduct business, exercise powers, and fulfill duties by the vote of a majority of the members present at any meeting.

(h) *Felonies described.* — The felonies described in this subsection are violations of any of the following provisions of law:

(1) The following provisions relating to arson:

(A) Section 22-401.

(B) Section 22-402.

(2) The following provisions relating to felony assault:
(A) Section 22-501.
(B) Section 22-502.
(C) Section 22-503.
(D) Section 22-504.1.
(E) Section 22-505.
(F) Section 22-506.
(3) Section 22-722 (relating to obstruction of justice).
(4) Section 22-901 (relating to cruelty to children).
(5) Section 22-1801 (relating to first degree burglary).
(6) Section 22-2101 (relating to kidnapping).
(7) The following provisions relating to murder and manslaughter:
(A) Section 22-2401.
(B) Section 22-2402.
(C) Section 22-2403.
(D) Section 22-2404.
(E) Section 22-2405.
(F) Section 22-2406.
(8) Section 22-2601 (relating to prison breach).
(9) Section 22-2603.
(10) Section 22-2901 (relating to robbery).
(11) Section 22-2903 (relating to carjacking).
(12) Chapter 32 of Title 22.
(13) The following provisions relating to sex offenses:
(A) Section 22-4102.
(B) Section 22-4103.
(C) Section 22-4104.
(D) Section 22-4105.
(E) Section 22-4108.
(F) Section 22-4109.
(G) Section 22-4110.
(H) Section 22-4113.
(I) Section 22-4114.
(J) Section 22-4115.
(K) Section 22-4116.
(L) Section 22-4118.
(M) Section 22-4120.
(14) Section 33-541 (relating to recidivist drug offenders), but only in the case of a second or subsequent violation. (Aug. 5, 1997, 111 Stat. 741, Pub. L. 105-33, § 11212.)

Cross references. — As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

References in text. — "This Act," referred to in this section, is the the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

§ 24-1213. Data collection.

(a) *Data for Attorney General.* — The Commission, the Superior Court of the District of Columbia, the District of Columbia Department of Corrections, and

other agencies as necessary shall provide to the Attorney General such data as are requested in furtherance of this Act.

(b) *Superior Court.* — The Superior Court of the District of Columbia, in connection with defendants sentenced in such Court, shall provide to the Commission and the Attorney General such data as are requested for planning, statistical analysis or projecting future prison population levels. (Aug. 5, 1997, 111 Stat. 744, Pub. L. 105-33, § 11213.)

References in text. — "This Act," referred to in (a), is the the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

§ 24-1214. Enactment of amendments to District of Columbia Code.

If, within 270 days after August 5, 1997, the Council of the District of Columbia has failed to amend the District of Columbia Code to enact in whole the recommendations of the Commission under this chapter, or if the Commission fails to make such recommendations within the deadline established under such section, the Attorney General (after consultation with the Commission) shall promulgate within 90 days amendments to the District of Columbia Code with respect to the sentences to be imposed for all offenses committed on or after 3 years after August 5, 1997. Such amendments shall be consistent with the standards of subsections (a) through (d) of § 24-1212. Such amendments shall take effect 30 days after the Attorney General transmits the recommendations to Congress. (Aug. 5, 1997, 111 Stat. 744, Pub. L. 105-33, § 11214.)

References in text. — "This Act," referred to in this section, is the the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

Subchapter III. Offender Supervision and Parole.

§ 24-1231. Parole.

(a) *Paroling jurisdiction.* —

(1) *Jurisdiction of Parole Commission to grant or deny parole and to impose conditions.* — Not later than one year after August 5, 1997, the United States Parole Commission shall assume the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. The Parole Commission shall have exclusive authority to amend or supplement any regulation interpreting or implementing the parole laws of the District of Columbia with respect to felons, provided that the Commission adheres to the rulemaking procedures set forth in § 4218 of title 18, United States Code.

(2) *Jurisdiction of Parole Commission to revoke parole or modify conditions.* — On the date in which the Court Services and Offender Supervision Agency for the District of Columbia is established under § 24-1233, the United States Parole Commission shall assume any remaining powers, duties, and jurisdiction of the Board of Parole of the District of Columbia, including

jurisdiction to revoke parole and to modify the conditions of parole, with respect to felons.

(3) *Jurisdiction of Superior Court.* — On the date on which the Court Services and Offender Supervision Agency for the District of Columbia is established under § 24-1233, the Superior Court of the District of Columbia shall assume the jurisdiction and authority of the Board of Parole of the District of Columbia to grant, deny, and revoke parole, and to impose and modify conditions of parole, with respect to misdemeanants.

(b) *Abolition of the Board of Parole.* — On the date on which the Court Services and Offender Supervision Agency for the District of Columbia is established under § 24-1233, the Board of Parole established in the District of Columbia Board of Parole Amendment Act of 1987 shall be abolished.

(c) *Rulemaking and legislative responsibility for parole matter.* — The Parole Commission shall exercise the authority vested in it by this section pursuant to the parole laws and regulations of the District of Columbia, except that the Council of the District of Columbia and the Board of Parole of the District of Columbia may not revise any such laws or regulations (as in effect on August 5, 1997) without the concurrence of the Attorney General. (Aug. 5, 1997, 111 Stat. 745, Pub. L. 105-33, § 11231; Oct. 21, 1998, 112 Stat. 2426, Pub. L. 105-274, § 7(c)(2)(A).)

Effect of amendments. — Public Law 105-274 substituted "Court Services and Offender Supervision Agency for the District of Columbia" for "District of Columbia Offender Supervision, Defender, and Courts Services Agency" in (a)(2), (a)(3), and (b).

References in text. — The "District of Columbia Board of Parole Amendment Act of 1987," referred to in (b), is D.C. Law 7-103, 34 DCR 8279, effective April 8, 1988.

"The date of the enactment of this Act," referred to in (a) and (c), is August 5, 1997.

§ 24-1232. Pretrial services, parole, adult probation and offender supervision trustee.

(a) *Appointment and removal.* —

(1) *Appointment.* — The Attorney General, in consultation with the Chairman of the District of Columbia Financial Responsibility and Management Assistance Authority (hereafter in this section referred to as the "D.C. Control Board") and the Mayor of the District of Columbia, shall appoint a Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee, who shall be an independent officer of the government of the District of Columbia, to effectuate the reorganization and transition of functions and funding relating to pretrial services, defense services, parole, adult probation and offender supervision.

(2) *Removal.* — The Trustee may be removed by the Mayor with the concurrence of the Attorney General. The Attorney General shall have the authority to remove the Trustee for misfeasance or malfeasance in office. At the request of the Trustee, the District of Columbia Financial Responsibility and Management Assistance Authority may exercise any of its powers and authorities on behalf of the Trustee.

(b) *Authority.* — Beginning on the date of appointment, and continuing until the Court Services and Offender Supervision Agency for the District of Columbia is established under § 24-1233, the Trustee shall:

(1) Have the authority to exercise all powers and functions authorized for the Director of the Court Services and Offender Supervision Agency for the District of Columbia;

(2) Have the authority to direct the actions of all agencies of the District of Columbia whose functions will be assumed by or within the Court Services and Offender Supervision Agency for the District of Columbia, and of the Board of Parole of the District of Columbia, including the authority to discharge or replace any officers or employees of these agencies;

(3) Exercise financial oversight over all agencies of the District of Columbia whose functions will be assumed by or within the Court Services and Offender Supervision Agency for the District of Columbia, and over the Board of Parole of the District of Columbia, and allocate funds to these agencies as appropriated by Congress and allocated by the President;

(4) Receive and transmit to the District of Columbia Pretrial Services Agency all funds appropriated for such agency; and

(5) Receive and transmit to the District of Columbia Public Defender Service all funds appropriated for such agency.

(c) *Compensation.* — The Trustee shall be compensated at a rate not to exceed the basic pay payable for Level IV of the Executive Schedule. The Trustee may appoint and fix the pay of additional staff without regard to the provisions of the District of Columbia Code governing appointments and salaries, without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code, relating to classification and General Schedule pay rates. Upon request of the Trustee, the head of any Federal department or agency may, on a reimbursable or nonreimbursable basis, provide services and/or detail any personnel of that department or agency to the Trusteeship to assist in carrying out its duties.

(d) *Procurement and judicial review.* — The provisions of the District of Columbia Code governing procurement shall not apply to the Trustee. The Trustee may enter into such contracts as the Trustee considers appropriate to carry out the Trustee's duties. The Trustee may seek judicial enforcement of the Trustee's authority to carry out the Trustee's duties.

(e) *Preservation of retirement and certain other rights of federal employee who becomes the trustee or federal employees who become employed by the trustee.* —

(1) *In general.* — A Federal employee who, within 3 days after separating from the Federal Government, is appointed Trustee or becomes employed by the Trustee:

(A) Shall be treated as an employee of the Federal Government for purposes of chapters 83, 84, 87, and 89 of Title 5 of the United States Code; and

(B) If, after serving with the Trustee, such employee becomes reemployed by the Federal Government, shall be entitled to credit for the full period of such individual's service with the Trustee, for purposes of determining the applicable leave accrual rate.

(2) *Regulations.* — The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this subsection.

(f) *Funding.* — Funds available for operations of the Trustee shall be made available to the extent provided in appropriations acts to the Trustee, through

the State Justice Institute. Funding requests shall be proposed by the Trustee to the President and Congress for each Fiscal Year.

(g) *Liability and litigation authority.* —

(1) *Liability.* — The District of Columbia shall defend any civil action or proceeding brought in any court or other official Federal, state, or municipal forum against the Trustee, or against the District of Columbia or its officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding, if the action or proceeding arises from the:

(A) Supervision of offenders on probation, parole, or supervised release;

(B) Provision of pretrial services by the District of Columbia; or

(C) Activities of the District of Columbia Board of Parole.

(2) *Litigation.* —

(A) *Corporation Counsel.* — Subject to subparagraph (B) of this paragraph, the Corporation Counsel of the District of Columbia shall provide litigation services to the Trustee, except that the Trustee may instead elect, either generally or in relation to particular cases or classes of cases, to hire necessary staff and personnel or enter into contracts for the provision of litigation services at the Trustee's expense.

(B) *Attorney General.* —

(i) *In general.* — Notwithstanding subparagraph (A) of this paragraph, with respect to any litigation involving the Trustee, the Attorney General may:

(I) Direct the litigation of the Trustee, and of the District of Columbia on behalf of the Trustee; and

(II) Provide on a reimbursable or nonreimbursable basis litigation services for the Trustee at the Trustee's request or on the Attorney General's own initiative.

(ii) *Approval of settlement.* — With respect to any litigation involving the Trustee, the Trustee may not agree to any settlement involving any form of equitable relief without the approval of the Attorney General. The Trustee shall provide to the Attorney General such notice and reports concerning litigation as the Attorney General may direct.

(iii) *Discretion.* — Any decision to exercise any authority of the Attorney General under this paragraph shall be in the sole discretion of the Attorney General and shall not be reviewable in any court.

(3) *Limitations.* — Nothing in this section shall be construed:

(1) As a waiver of sovereign immunity, or as limiting any other defense or immunity that would otherwise be available to the United States, the District of Columbia, their agencies, officers, employees, or agents; or

(2) To obligate the District of Columbia to represent or indemnify the Corrections Trustee or any officer, employee, or agent where the Trustee (or any person employed by or acting under the authority of the Trustee) acts beyond the scope of his authority.

(h) *Certification.* — The Court Services and Offender Supervision Agency for the District of Columbia shall assume its duties pursuant to § 24-1233 when, within the period beginning one year after the date of the enactment of this subtitle and ending three years after the date of the enactment of this subtitle, the Trustee certifies to the Attorney General and the Attorney General concurs that the Agency can carry out the functions described in § 24-1233 and the

United States Parole Commission can carry out the functions described in § 24-1231.

(i) *Exercise of authority on behalf of Public Defender Service.* — At the request of the Director of the District of Columbia Public Defender Service, the Trustee may exercise any of the powers and authorities of the Trustee on behalf of such Service in the same manner and to the same extent as the Trustee may exercise such powers and authorities in relation to any agency described in subsection (b) of this section. (Aug. 5, 1997, 111 Stat. 746, Pub. L. 105-33, § 11232; Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 7(a)(1), (a)(4), (b), (c)(2)(B).)

Effect of amendments. — Public Law 105-274 deleted "defense services" following "pretrial services" in the section heading and in (a)(1); substituted "Court Services and Offender Supervision Agency for the District of Columbia" for "District of Columbia Offender Supervision, Defender, and Courts Services Agency" throughout (b) and in (h); deleted "except that the Trustee may not direct the conduct of particular cases by the District of Columbia Public Defender Service" from the end of (b)(2); and added (i).

§ 24-1233. Court Services and Offender Supervision Agency.

(a) *Establishment.* — There is established within the executive branch of the Federal Government the Court Services and Offender Supervision Agency for the District of Columbia (hereafter in this section referred to as the "Agency") which shall assumes its duties not less than one year or more than three years after August 5, 1997.

(b) *Director.* —

(1) *Appointment and compensation.* — The Agency shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate, for a term of six years. The Director shall be compensated at the rate prescribed for Level IV of the Executive Schedule, and may be removed from office prior to the expiration of term only for neglect of duty, malfeasance in office, or other good cause shown.

(2) *Powers and duties of Director.* — The Director shall:

(A) Submit annual appropriation requests for the Agency to the Office of Management and Budget;

(B) Determine, in consultation with the Chief Judge of the United States District Court for the District of Columbia, the Chief Judge of the Superior Court of the District of Columbia, and the Chairman of the United States Parole Commission, uniform supervision and reporting practices for the Agency;

(C) Hire and supervise supervision officers and support staff for the Agency;

(D) Direct the use of funds made available to the Agency;

(E) Enter into such contracts, leases, and cooperative agreements as may be necessary for the performance of the Agency's functions, including contracts for substance abuse and other treatment and rehabilitative programs;

(F) Develop and operate intermediate sanctions programs for sentenced offenders;

(G) Arrange for the supervision of District of Columbia paroled offenders in jurisdictions outside the District of Columbia; and

(H) Carry out all functions which have heretofore been carried out by the Social Services Division of the Superior Court relating to supervision of adults subject to protection orders or provision of services for or related to such persons.

(c) *Functions.* —

(1) *In general.* — The Agency shall provide supervision, through qualified supervision officers, for offenders on probation, parole, and supervised release pursuant to the District of Columbia Code. The Agency shall carry out its responsibilities on behalf of the court or agency having jurisdiction over the offender being supervised.

(2) *Supervision of released offenders.* — The Agency shall supervise any offender who is released from imprisonment for any term of supervised release imposed by the Superior Court of the District of Columbia. Such offender shall be subject to the authority of the United States Parole Commission until completion of the term of supervised release. The United States Parole Commission shall have and exercise the same authority as is vested in the United States district courts by paragraphs (d) through (i) of § 3583 of title 18, United States Code, except that:

(A) The procedures followed by the Commission in exercising such authority shall be those set forth in chapter 311 of title 18, United States Code; and

(B) An extension of a term of supervised release under subsection (e)(2) of § 3583 may only be ordered by the Superior Court upon motion from the Commission.

(3) *Supervision of probationers.* — Subject to appropriations and program availability, the Agency shall supervise all offenders placed on probation by the Superior Court of the District of Columbia. The Agency shall carry out the conditions of release imposed by the Superior Court (including conditions that probationers undergo training, education, therapy, counseling, drug testing, or drug treatment), and shall make such reports to the Superior Court with respect to an individual on probation as the Superior Court may require.

(4) *Supervision of District of Columbia parolees.* — The Agency shall supervise all individuals on parole pursuant to the District of Columbia Code. The Agency shall carry out the conditions of release imposed by the United States Parole Commission or, with respect to a misdemeanant, by the Superior Court of the District of Columbia, and shall make such reports to the Commission or Court with respect to an individual on parole supervision as the Commission or Court may require.

(d) *Authority of officers.* — The supervision officers of the Agency shall have and exercise the same powers and authority as are granted by law to United States Probation and Pretrial Officers.

(e) *Pretrial Services Agency.* —

(1) *Independent entity.* — The District of Columbia Pretrial Services Agency established by subchapter I of Chapter 13 of Title 23, District of Columbia Code, shall function as an independent entity within the Agency.

(2) *Submission on behalf of Pretrial Services.* — The Director of the Agency shall submit, on behalf of the District of Columbia Pretrial Services Agency and with the approval of the Director of the Pretrial Services Agency, an annual appropriation request to the Office of Management and Budget. Such request shall be separate from the request submitted for the Agency.

(3) *Liability of District of Columbia.* — The District of Columbia shall defend any civil action or proceeding brought in any court or other official Federal, state, or municipal forum against the District of Columbia Pretrial Services Agency or the District of Columbia or its officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding, if the action or proceeding arises from the activities of the District of Columbia Pretrial Services Agency prior to the date on which the Offender Supervision, Defender and Courts Services Agency assumes its duties.

(4) *Litigation.* —

(A) *Corporation Counsel.* — Subject to subparagraph (B), the Corporation Counsel of the District of Columbia shall provide litigation services to the District of Columbia Pretrial Services Agency, except that the District of Columbia Pretrial Services Agency may instead elect, either generally or in relation to particular cases or classes of cases, to hire necessary staff and personnel or enter into contracts for the provision of litigation services at such agency's expense.

(B) *Attorney General.* —

(i) *In general.* — Notwithstanding subparagraph (A) of this paragraph, with respect to any litigation involving the District of Columbia Pretrial Services Agency, the Attorney General may:

(I) Direct the litigation of the agency, and of the District of Columbia on behalf of the agency; and

(II) Provide on a reimbursable or non-reimbursable basis litigation services for the agency at the agency's request or on the Attorney General's own initiative.

(ii) *Approval of settlement.* — With respect to any litigation involving the District of Columbia Pretrial Services Agency, the agency may not agree to any settlement involving any form of equitable relief without the approval of the Attorney General. The agency shall provide to the Attorney General such notice and reports concerning litigation as the Attorney General may direct.

(iii) *Discretion.* — Any decision to exercise any authority of the Attorney General under this paragraph shall be in the sole discretion of the Attorney General and shall not be reviewable in any court.

(f) *Receipt and transmittal of appropriations for Public Defender Service.* — The Director of the Agency shall receive and transmit to the District of Columbia Public Defender Service all funds appropriated for such agency. (Aug. 5, 1997, 111 Stat. 748, Pub. L. 105-33, § 11233; Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 7(a)(2), (c)(1), (e)(2)(C); Oct. 21, 1998, 112 Stat. 2681-147, Pub. L. 105-277, § 158(a).)

Effect of amendments. — Public Law 105-274 substituted "Court Services and Offender Supervision Agency for the District of Columbia" for "District of Columbia Offender Supervision, Defender, and Courts Services Agency" in (a); deleted "and Public Defender Service" from the subcatchline in (e); rewrote (e)(1); deleted (e)(3) and redesignated (e)(4) and (e)(5) as present (e)(3) and (e)(4); deleted "the District of Columbia Public Defender Service" throughout (e)(3) and (e)(4)(A); and added (f).

Public Law 105-277 added (b)(2)(H).

References in text. — "This Act," referred to in this section, is the the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712.

Retirement election for certain former employees of the District of Columbia. — Section 3 of Pub. L. 105-274, 112 Stat. 2423, provides that:

(a) In general. — Notwithstanding any provision of the District of Columbia Code, or of chapter 83 or chapter 84 of title 5, United

States Code, a former employee of the District of Columbia who is hired by the Department of Justice, or by the agency established by section 11233(a) of the Balanced Budget Act of 1997 (hereafter in this section referred to as the "Agency"), on or after August 5, 1997, may elect, within 60 days after the issuance of regulations pursuant to subsection (c), or within 60 days of being hired, if later, to be covered by the retirement system of the District of Columbia under which the person was most recently covered. No election under this subsection may be made by a person who is hired more than one year after the date on which the Lorton Correctional Complex is closed, or more than one year after the date on which the Agency assumes its duties, whichever is later.

(b) Period of election. — The election authorized by subsection (a) shall remain in force until the employee is no longer employed by the agency in which her or she was employed at the time the election was made.

(c) Regulations. — The election authorized by subsection (a) shall be in accordance with regulations issued by the Office of Personnel Management after consulting with the Department of Justice, the Agency, and the government of the District of Columbia. The government of the District of Columbia shall administer the retirement coverage for any employee making such an election.

Leave for certain former employees of the District of Columbia. — Section 4 of Pub. L. 105-274, 112 Stat. 2423, provides that:

(a) In general. — Notwithstanding any provision of law, a former employee of the District of Columbia who is hired by the Department of Justice, or by the agency established by section 11233(a) of the Balanced Budget Act of 1997 (hereafter in this section referred to as the "Agency"), on or after August 5, 1997, shall —

(1) in determining the rate of accrual of annual leave under section 6303 of title 5, United States Code, be entitled to credit for service as an employee of the District of Columbia;

(2) to the extent that the employee has not used or otherwise been compensated for annual leave accrued as an employee of the District of Columbia, have all such accrued annual leave transferred, in accordance with the procedures established under section 6308 of title 5, United States Code, to the credit of the employee in the new employing agency; and

(3) to the extent the employee has not used or otherwise been compensated for sick leave accrued as an employee of the District of Columbia, have all such accrued sick leave transferred, in accordance with the procedures established under section 6308 of title 5, United States Code, to the credit of the employee in the new employing agency.

(b) Termination. — Subsection (a) is not applicable to any former employee of the District of Columbia who is hired by the Department of Justice or the Agency more than one year after the date on which the Lorton Correctional Complex is closed, or more than one year after the date on which the Agency assumes its duties, whichever is later.

§ 24-1234. Authorization of appropriations.

There are authorized to be appropriated in each fiscal year such sums as may be necessary for the following:

(1) District of Columbia Pretrial Services Agency.

(2) Supervision of offenders on probation, parole, or supervised release for offenses under the District of Columbia Code.

(3) Operation of the parole system for offenders convicted of offenses under the District of Columbia Code.

(4) Operation of the Trusteeship described in § 24-1232. (Aug. 5, 1997, 111 Stat. 751, Pub. L. 105-33, § 11234; Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, §§ 6(b)(2), 7(a)(3).)

Effect of amendments. — Public Law 105-274 deleted "through the State Justice Institute" in the introductory paragraph; and deleted (2) and redesignated the remaining paragraphs accordingly.

Subchapter IV. Special Provisions for Trustees.

§ 24-1241. Reemployed annuitant Trustee.

Notwithstanding any other provision of Federal or District of Columbia law applicable to a reemployed annuitant's entitlement to retirement or pension

benefits, the Director of the Office of Personnel Management may waive the provisions of § 8344 of Title 5 of the United States Code for any reemployed annuitants appointed heretofore or hereafter as a Trustee under § 24-1202 or § 24-1232, or, at the request of such a Trustee, for any employee of such Trustee. (Nov. 19, 1997, 111 Stat. 2190, Pub. L. 105-100, § 166.)

§ 24-1242. Exemption from personnel and budget ceilings for Trustees and related agencies.

The Trustees described in §§ 24-1202 and 24-1232 and the activities and personnel of, and the funds allocated or otherwise available to, the Trustees and the agencies over which the Trustees exercise financial oversight pursuant to those sections, shall not be subject to any general personnel or budget limitations which otherwise apply to the District of Columbia government or its agencies in any appropriations act. (Aug. 5, 1997, 111 Stat. 763, Pub. L. 105-33, § 11282.)

Effective date of Title XI of Pub. L. 105-33. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

PART V.

GENERAL STATUTES.

TITLE 25. ALCOHOLIC BEVERAGES.

Chapter 1. Alcoholic Beverage Control.

§ 25-102. Short title; application of chapter.

Cited in Milton S. Kronheim & Co. v. District of Columbia, 91 F.3d 193 (D.C. Cir. 1996).

§ 25-103. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

* * * * *

(7) The word "club" means a corporation for the promotion of some common object (not including corporations organized for any commercial or business purpose, the object of which is money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the Board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests, and including such space outside of the building and adjoining it as may be approved by the Board, and provided with such suitable and adequate kitchen and dining room space and equipment, implements, and facilities, and employing such a sufficient number of employees for cooking, preparing, and serving meals for its members and their guests, as shall satisfy the Board that the sale

of beverages intended is not more than an incident to and is not the prime source of revenue from such space; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year and no officer, agent, or employee of the club is paid directly or indirectly, or receives in the form of salary or other compensation, any profit from the disposition or sale of beverages to the club or to the members of the club or guests introduced by members beyond the amount of such salary as may be fixed and voted by the members, or by its directors, or other governing body. The term "club" shall not include a student college fraternity or sorority.

* * * * *

(11A) The words "opened container" mean a bottle, can, or other container that is open or from which the top, cap, cork, seal, or tab seal has at some time been removed.

(11B) The word "parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to such property line, as such property line and sidewalk are shown on the records of the District.

* * * * *

(29) The words "DC Arena" mean the multi-purpose arena for the performance of sports and entertainment events and related amenities described in recital "E" of the Land Disposition Agreement-Ground Lease By and Among the District of Columbia Redevelopment Land Agency, the District of Columbia and DC Arena L.P., dated December 29, 1995. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 1; 1973 Ed., § 25-103; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Sept. 29, 1982, D.C. Law 4-157, §§ 2, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law 5-16, § 2, 30 DCR 3193; May 23, 1986, D.C. Law 6-119, § 2, 33 DCR 2447; Mar. 7, 1987, D.C. Law 6-217, § 2, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(a), 38 DCR 4974; Oct. 3, 1992, D.C. Law 9-174, § 2(a), 39 DCR 5859; Sept. 11, 1993, D.C. Law 10-12, § 2(a), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(a), 41 DCR 1658; Apr. 12, 1997, D.C. Law 11-258, § 2(a), 44 DCR 1421; Mar. 26, 1999, D.C. Law 12-202, § 2(a), 45 DCR 8412; Mar. 26, 1999, D.C. Law 12-206, § 2(a), 45 DCR 8430.)

Effect of amendments.

D.C. Law 11-258 added the last sentence in (7).

D.C. Law 12-202 added (29).

D.C. Law 12-206 inserted (11A) and (11B).

Temporary amendment of section. — Section 2(a) of D.C. Law 12-48 added (29).

Section 5(b) of D.C. Law 12-48 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 2(a) of the Alcoholic Beverage Control DC Arena Emergency Amendment Act of 1997 (D.C. Act 12-121, August 1, 1997, 44 DCR 4645), § 2(a) of the Alcoholic Beverage Control DC Arena Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-290, February 27, 1998, 45 DCR 1749), § 2(a) of the Alcoholic Beverage Control DC Arena Emergency Amendment Act of 1998 (D.C. Act 12-478, October 28, 1998, 45 DCR 8010), and § 2(a) of the Alcoholic Beverage Control DC Arena Second Emergency Amendment Act of 1998 (D.C.

Act 12-551, December 24, 1998, 45 DCR 517).

Section 5 of D.C. Act 12-290 provides for the application of the act.

Section 5 of D.C. Act 12-478 provides for the application of the act.

Section 5 of D.C. Act 12-551 provides for the application of the act.

For temporary amendment of § 5 of the Alcoholic Beverage Control DC Arena Second Emergency Amendment Act of 1998 (D.C. Act 12-551, December 24, 1998, 45 DCR 517), see § 3 of the Omnibus Regulatory Reform and Alcoholic Beverage Control DC Arena Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-1, January 29, 1999, 46 DCR 2284).

Legislative history of Law 11-258. — Law 11-258, the "Alcohol Beverage Control Act Private Club Exception Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-505, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-525 and transmitted to both Houses of Congress for its review. D.C. Law 11-258 became effective on April 12, 1997.

Legislative history of Law 12-48. — Law 12-48, the "Alcoholic Beverage Control DC Arena Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-293. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-167 and transmitted to both Houses of Congress for its review. D.C. Law 12-48 became effective on February 26, 1998.

Legislative history of Law 12-202. — Law 12-202, the "Alcoholic Beverage Control DC Arena Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-294, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 13, 1998, it was assigned Act No. 12-488 and transmitted to both Houses of Congress for its review. D.C. Law 12-202 became effective on March 26, 1999.

Legislative history of Law 12-206. — Law 12-206, the "Opened Alcoholic Beverage Containers Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-612, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 14, 1998, it was assigned Act No. 12-493 and transmitted to both Houses of Congress for its review. D.C. Law 12-206 became effective on March 26, 1999.

Cited in Chase v. District of Columbia ABC Bd., App. D.C., 669 A.2d 1264 (1995).

§ 25-104. Alcoholic Beverage Control Board — Appointment; qualifications; term of office; vacancies; Chairman; employees; expenses.

Cross references. — As to compensation of members of the Alcohol Beverage Control Board, see § 1-612.8(c)(2)(I).

As to compensation of the Chairman of the Alcohol Beverage Control Board, see § 1-612.8(c)(2)(J).

Section references. — This section is referred to in §§ 1-633.7, 1-637.1 and 1-1462.

Cited in Milton S. Kronheim & Co. v. District of Columbia, 91 F.3d 193 (D.C. Cir. 1996).

§ 25-106. Same — Powers and duties.

Cited in Milton S. Kronheim & Co. v. District of Columbia, 91 F.3d 193 (D.C. Cir. 1996).

§ 25-107. Council authorized to make rules and regulations.

Brew-Pub Zone Expansion Resolution of 1997. — Proposed Resolution 12-0114, the "Brew-Pub Zone Expansion Resolution of 1997" was deemed approved, effective Feb. 5, 1997.

Cited in Milton S. Kronheim & Co. v. District of Columbia, 91 F.3d 193 (D.C. Cir. 1996).

§ 25-108. Alcohol used for nonbeverage purposes.

(a) No provision of this chapter shall apply to alcohol intended for use in the manufacture and sale of any of the following when they are unfit for beverage purposes, namely:

* * * * *

(3) Flavoring extracts, syrups, and food products; or

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 21(a), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic change in (a)(3).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 25-109. Manufacture or sale of alcoholic beverage without license prohibited; exception.

Cited in Milton S. Kronheim & Co. v. District of Columbia, 91 F.3d 193 (D.C. Cir. 1996).

§ 25-111. Same — Classifications; fees.

(a) Licenses issued under authority of this chapter shall be of 23 kinds:

* * * * *

(7) *Retailer's licenses, class C.* —

* * * * *

(G)(i) A retailer's license, class C/X shall be issued only for a club, a legitimate theater, the Washington Convention Center, the Lincoln Theatre, a passenger-carrying marine vessel serving food, or a club car or dining car on a railroad.

* * * * *

(G-i)(i) Upon each initial application pursuant to § 25-115(a), the Board, after determining that the requirements of § 25-115(g) have been met, shall issue one or more retailer's licenses for the DC Arena in accordance with the provisions of this subparagraph to the lessee upon application of the lessee under the Land Disposition Agreement-Ground Lease By and Among the District of Columbia Redevelopment Land Agency, the District of Columbia and DC Arena L.P., dated December 29, 1995 ("Land Disposition Lease"). At the option of the lessee, such licenses may be issued to concessionaires and tenants of the lessee, as such may be requested from time to time by the lessee. Such retailer's licenses may be canceled by the Board at the request of the District of Columbia Redevelopment Land Agency ("RLA") in the event that the lessee ceases to operate the DC Arena. If the lessee assigns its interest in the

Land Disposition Lease, the Board shall, at the request of the RLA, transfer such retailer's licenses as may be then held by the lessee to the lessee's assignee, upon application pursuant to § 25-115(a) and approval by the Board.

(ii) The retailer's license, class Arena C/X shall be issued only for the DC Arena. The retailer's license, class Arena C/X shall permit the storage and sale of spirits, wine, and beer for consumption anywhere on the premises of the DC Arena. One or more retailer's licenses, class Arena C/X shall be issued either as the license for all alcoholic beverage operations at the DC Arena or individually for concession stands, portable bars and other non-fixed locations, or suite and club suite service. Such retailer's license, class Arena C/X shall not permit the sale or dispensing of alcoholic beverages in unbroken packages for the purpose of permitting such packages to be carried off the premises.

(iii) One or more retailer's licenses, class C shall be issued to concessionaires or tenants of the DC Arena for suitable locations within the DC Arena approved by the Board, where food and alcoholic beverages are served. Each initial issuance of the retailer's licenses, class C to concessionaires or tenants of the DC Arena shall be upon application pursuant to § 25-115(a), and subject to a determination by the Board that the requirements of § 25-115(g) have been met.

(iv) The annual license fee for the retailer's licenses, class Arena C/X for the DC Arena shall be established by the Mayor. The annual license fee for a retailer's license, class C issued to a concessionaire or tenant of the DC Arena shall be in accordance with subparagraph (I) of this paragraph.

(v) The initial issuance of each retailer's license, class Arena C/X for the D.C. Arena, and the initial issuance of each retailer's license, class C to concessionaires or tenants of the DC Arena, shall not be subject to § 25-115(b), (c), (e), and (f). The reissuance of each retailer's license class Arena C/X for the DC Arena and the re-issuance of each retailer's license, class C to concessionaires and tenants of the DC Arena nonetheless shall be subject to § 25-115(b).

(vi) To the extent that the provisions of this subparagraph are inconsistent with provisions of the Alcoholic Beverages and Food Regulations (23 DCMR), the provisions of this subparagraph shall control. Except as otherwise provided in this subparagraph, the licensee of a retailer's license, class Arena C/X and the license, class C issued to a concessionaire or tenant of the DC Arena shall be subject to all provisions of this chapter, and all other applicable laws and regulations of the District of Columbia.

* * * * *

(c) Any license issued pursuant to this section shall be issued as a Class A Alcoholic Beverages endorsement to a master business license under the master business license system as set forth in subchapter 1A of Chapter 28 of Title 47. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; 1973 Ed., § 25-111; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978,

D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142.)

Effect of amendments.

D.C. Law 12-202, in (a), substituted "23" for "22" in the introductory language; inserted "the Lincoln Theatre" in (7)(G)(i); and added (7)(G-i).

D.C. Law 12-261 added (c).

Temporary amendment of section. — Section 2(b) of D.C. Law 12-48, in (a), substituted "23" for "22" in the introductory language; and added (7)(G-i).

Section 5(b) of D.C. Law 12-48 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(b)(2) of the Alcoholic Beverage Control DC Arena Emergency Amendment Act of 1997 (D.C. Act 12-121, August 1, 1997, 44 DCR 4645), § 2(b) of the Alcoholic Beverage Control DC Arena Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-174, October 30, 1997, DCR 6914), § 2(b) of the Alcoholic Beverage Control DC Arena Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-290, February 27, 1998, 45 DCR 1749), § 2(b) of the Alcoholic Beverage Control DC Arena Emergency Amendment Act of 1998 (D.C. Act 12-478, October 28, 1998, 45 DCR 8010), and § 2(b) of the Alcoholic Beverage Control DC Arena Second Emergency Amendment Act of 1998 (D.C. Act 12-551, December 24, 1998, 45 DCR 517).

Section 5 of D.C. Act 12-290 provides for the application of the act.

Section 5 of D.C. Act 12-478 provides for the application of the act.

Section 5 of D.C. Act 12-551 provides for the application of the act.

For temporary amendment of § 5 of the Alcoholic Beverage Control DC Arena Second Emergency Amendment Act of 1998 (D.C. Act 12-551, December 24, 1998, 45 DCR 517), see § 3 of the Omnibus Regulatory Reform and Alcoholic Beverage Control DC Arena Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-1, January 29, 1999, 46 DCR 2284).

Legislative history of Law 12-48. — See note to § 25-103.

Legislative history of Law 12-202. — See note at § 25-103.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Statutorily required existence as club. — Where an applicant's club had been established as a nonprofit membership organization for two years prior to its application for licensure and where the applicant had become a corporation only five weeks before applying for a retailer's license, contrary to subdivision (a)(7)(G)(ii) which requires a club to have been established for three months prior to applying for a license, the application for a retailer's license was denied since the two years in which the organization had been active and had served alcoholic beverages to its members and guests without a license could not be considered part of the three-month statutory period required for an organization to have existed as incorporated club prior to its application for licensure. Chase v. District of Columbia ABC Bd., App. D.C., 669 A.2d 1264 (1995).

§ 25-113. Licenses — Holding of more than 1 class; "interest" defined; certain licenses held or pending on June 22, 1982.

Cited in Milton S. Kronheim & Co. v. District of Columbia, 91 F.3d 193 (D.C. Cir. 1996).

§ 25-114. Same — Terms; fees; description of premises; storage of beverages.

Subsection (f) constitutional and valid exercise of District's core enforcement power under the Twenty-First Amendment. — Although subsection (f) of this section facially violates the Interstate Commerce Clause of the federal Constitution in that it discriminatorily allows only wholesalers who store their beverages within the District to sell their product, it is nevertheless constitutional as a valid exercise of the District's core enforcement function under the Twenty-First Amendment. Milton S. Kronheim & Co. v. District of Columbia, 91 F.3d 193 (D.C. Cir. 1996), [but see Quality Brands, Inc. v. Barry, 715 F. Supp. 1138 (D.D.C. 1989)].

§ 25-115. Same — Application; qualifications; denial; exemptions.

* * * * *

(m) Any license issued pursuant to this section shall be issued as a Class A Alcoholic Beverages endorsement to a master business license under the master business license system as set forth in subchapter 1A of Chapter 28 of Title 47. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; 1973 Ed., § 25-115; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142.)

Effect of amendments.
D.C. Law 12-261 added (m).

Legislative history of Law 12-261. — See note to § 25-111.

§ 25-116. Same — Issuance in certain districts restricted.

(a) No retailer's licenses except class B or E shall be issued for any business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission, except for a restaurant or tavern conducted in a hotel or apartment house, and then only when the entrance to such restaurant or tavern is entirely inside the hotel or apartment house, and no sign or display is visible from the outside of the building. The holder of a club license in effect prior to May 24, 1994, shall be permitted to renew the license or transfer it to a new owner, provided that the license shall not be transferred to a new location within a residential district. Notwithstanding any moratorium on license issuance declared by the Alcoholic Beverage Control Board, a club that meets the requirements of § 25-103(7) with a valid business license as of January 1, 1996, is located in a residential district, has been established at its existing location for at least 3 years prior to January 1, 1996, and has no outstanding debt to the federal or District of Columbia governments, shall be permitted to apply for a retailers license Class C/X for a period of time not to exceed 6 months after April 12, 1997. The Board, after determining that the requirements of § 25-115 have been met, may issue

a retailer's license Class C/X to a club in a residential district notwithstanding any moratorium on license issuance.

(b) No wholesaler's license shall be issued for any establishment conducted in such residential-use district and no manufacturer's license shall be issued for any establishment conducted in a residential- or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission. Nothing herein contained shall be construed as permitting the establishment of a bottling works in violation of said zoning regulations.

* * * * *

(e) Nothing contained in this section shall be construed as entitling a licensee to any preferential treatment or be construed as making inapplicable any provision in any other section of this chapter, in any case where an application is made pursuant to this section for the issuance or transfer of a retailer's license for a place of business conducted in a residential-use district, or for the issuance or transfer of a wholesaler's or manufacturer's license for a place of business conducted in a residential- or first commercial-use district, as such districts are defined in the zoning regulations and shown in the official atlases of the Zoning Commission, and the applicant for the issuance or transfer of any of the said licenses is the holder of a similar license for any of the said places of business in effect on the date the application for the new license, or transfer, is filed. A retailer's license, class C/N or D/N may be issued for a nightclub on the premises of a hotel that was legally located in a residence district and was operating a nightclub, as defined by this chapter, on the licensed premises on September 30, 1986. (Jan. 24, 1934, 48 Stat. 328, ch. 4, § 15; June 16, 1934, 48 Stat. 974, ch. 552; May 22, 1958, 72 Stat. 132, Pub. L. 85-423, § 1; 1973 Ed., § 25-116; Mar. 7, 1987, D.C. Law 6-217, § 10, 34 DCR 907; May 24, 1994, D.C. Law 10-122, § 2(g), 41 DCR 1658; Apr. 12, 1997, D.C. Law 11-258, § 2(b), 44 DCR 1421; Mar. 24, 1998, D.C. Law 12-81, § 15, 45 DCR 745.)

Effect of amendments.

D.C. Law 11-258 added the last 2 sentences in (a).

D.C. Law 12-81 substituted "residential- or first commercial-use district" for "residential or first commercial-use district" throughout the section.

Legislative history of Law 11-258. — See note to § 25-103.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Restrictions applicable upon receipt of retailer's license Class C/X. — Section 3 of D.C. Law 11-258 provided that the following restrictions are applicable upon receipt of a retailer's license Class C/X: (1) the establishment may sell alcoholic beverages on no more than 208 days per calendar year; and (2) the retailer's Class C/X license issued to the establishment shall not be transferred to another person or location that is zoned residential at any time.

§ 25-118. Same — Revocation or suspension; offer in compromise of suspension; causes; hearing; posting of notice.

* * * * *

(f)(1) Whenever a licensed establishment is the subject of an incident report by the Metropolitan Police Department, the Department shall file a copy of the incident report with the Board. The Board shall make such report available for public inspection upon request.

(2) The Chief of Police may request the suspension or revocation of a license to sell alcohol where the Chief of Police determines that there is a correlation between increased incidents of crime within 1,000 feet of the establishment and the operation of the establishment. Such a determination shall be based on objective criteria, including but not limited to, incident reports, arrests and reported crime, occurring within the last 18 months and within 1,000 feet of the establishment.

(3) The Chief of Police is authorized to close any establishment for the remainder of the business day where the Chief believes continued operation presents an immediate danger to the health, safety and welfare to the public.

(g)(1) If the Board determines, after investigation, that the operations of a licensee present an imminent danger to the health and safety of the public or that the business for which the license was issued has been the scene of violence, committed either on the premises or within 1,000 feet of the business, by patrons leaving the business, the Board may summarily suspend or restrict, without a hearing, the license to sell alcoholic beverages in the District.

* * * * *

(h) The Board may suspend the license of any licensee whose business for which the license has been the scene of an assault on a police officer, government inspector or investigator, or other governmental official, who was acting in the line of duty, when such assault occurred by patrons who were within 1,000 feet of the business. The licensee shall be given an opportunity to be heard in his defense as provided herein. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 3(a); 1973 Ed., § 25-118; Sept. 29, 1982, D.C. Law 4-157, §§ 9, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(5), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 11; 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(b), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(h), 41 DCR 1658; Apr. 30, 1998, D.C. Law 12-97, § 2, 45 DCR 1517.)

Effect of amendments.

D.C. Law 12-97, in (f), added (2) and (3); in (g)(1), inserted "or that the business for which the license was issued has been the scene of violence, committed either on the premises or within 1,000 feet of the business, by patrons leaving the business"; and added (h).

Legislative history of Law 12-97. — Law 12-97, the "Suspension of Liquor Licenses Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-83, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned

Act No. 12-271 and transmitted to both Houses of Congress for its review. D.C. Law 12-97 became effective on April 30, 1998.

Delegation of Authority — Office of the Secretary. — See Mayor's Order 97-87, May 6, 1997 (44 DCR 2958).

§ 25-121. Sale to minors or intoxicated persons prohibited; consumption on licensed premises prohibited.

Cited in Zhou v. Jennifer Mall Restaurant, Inc., App. D.C., 699 A.2d 348 (1997).

§ 25-126.1. Prohibition on use of watercraft under certain conditions.

(a) No person shall, when the person's blood contains .08 % or more, by weight, of alcohol (or .48 micrograms or more of alcohol are contained in 1 milliliter of that person's breath, consisting of substantially alveolar air), when the person's urine contains .13 % or more, by weight, of alcohol, or when the person is under the influence of intoxicating liquor or any controlled substance or combination thereof, operate or be in physical control of any vessel or watercraft, including, but not limited to, water skis, aquaplane, surfboard, personal water craft, or similar device in the District of Columbia ("District").

(b) No person under 21 years of age shall, when the person's blood, breath, or urine contains any measurable amount of alcohol, operate or be in physical control of any vessel or watercraft listed in subsection (a) of this section.

(c) No person shall operate or be in physical control of any vessel or watercraft while the person is impaired by the consumption of intoxicating liquor.

(d) For the purposes of this section and §§ 25-127.2 through 25-127.6, the term "controlled substance" has the same meaning as in § 33-501(4). (Apr. 9, 1997, D.C. Law 11-201, § 2, 43 DCR 4390; Apr. 9, 1997, D.C. Law 11-248, § 2, 44 DCR 1242.)

Section references. — This section is referred to in § 25-127.3, 25-127.4, 25-127.5, and 25-127.6.

Temporary addition of section. — Section 2 of D.C Law 11-201 added §§ 25-127.1 through 25-127.6.

Section 10(b) of D.C Law 11-201 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of §§ 25-127.1 through 25-127.6, see § 2-7 of the Boating While Intoxicated Emergency Act of 1996 (D.C. Act 11-346, August 8, 1996, 43 DCR 4621), § 2-7 of the Boating While Intoxicated Congressional Review Emergency Act of 1996 (D.C. Act 11-411, October 28, 1996, 43 DCR 6063) and §§ 2-7 of the Boating While Intoxicated Second Congressional Review Emergency Act of 1996 (D.C. Act 11-469, December 30, 1996, 44 DCR 179).

Legislative history of Law 11-201. — Law 11-201, the "Boating While Intoxicated Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-804. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act. No. 11-364 and transmitted to both Houses of Congress for its review. D.C. Law 11-201 became effective on April 9, 1997.

Legislative history of Law 11-248. — Law 11-248, the "Boating While Intoxicated Act of 1996," was introduced in Council and assigned Bill No. 11-567, which was referred to the Committee on Public Works and the Environment. The Bill was adopted in first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-511 and transmitted to both Houses of Congress for its review. D.C. Law 11-248 became effective on April 9, 1997.

§ 25-126.2. Consent to testing.

(a) Any person operating or in physical control of any vessel or watercraft while under the influence of, or intoxicated by, alcohol or a controlled substance, as cited in § 25-127.1, shall be deemed to have given that person's consent for 2 chemical tests of the person's blood, urine, or breath for the purpose of determining the person's blood-alcohol or drug content. If a person refuses to submit to a chemical test under this chapter, the District of Columbia Superior Court shall order that the person not operate any vessel or watercraft for at least one year.

(b) The arresting police officer or any other appropriate law enforcement official shall elect which chemical test shall be administered to the person, provided that the person may object to a particular test on valid religious or medical grounds.

(c) The test shall be administered at the direction of a police officer or other appropriate law enforcement official.

(d) Chemical tests shall be performed on all operators involved in a fatal accident. If a person who operates or is in physical control of any vessl or watercraft is declared dead by competent authority, that person shall be deemed to have given his or her consent to chemical tests as soon as practical after the death has been declared to be the result of a fatal accident. (Apr. 9, 1997, D.C. Law 11-201, § 3, 43 DCR 4390; Apr. 9, 1997, D.C. Law 11-248, § 3, 44 DCR 1242.)

Section references. — This section is referred to in § 25-126.6.

Temporary addition of section. — See note to § 25-126.1.

Emergency act amendments. — See note to § 25-126.1.

Legislative history of Law 11-201. — See note to § 25-127.1.

Legislative history of Law 11-248. — See note to § 25-126.1.

§ 25-126.3. Preliminary testing; admissibility of test results.

(a) A law enforcement officer who has reasonable grounds to believe that a person is or has been violating any provision of § 25-127.1, without making an arrest or issuing a citation, may request the person to submit to a preliminary breath test, to be administered by the officer, who shall use a device which the Mayor has by rule approved for that purpose. Before administering the test, the officer shall advise the person to be tested that the results of the test will be used to aid in the officer's decision whether to arrest the person.

(b) The results of a preliminary test shall not be used as evidence by the District in any prosecution and shall not be admissible in any judicial proceedings.

(c) The results of the test may be used, and shall be admissible, in any judicial proceeding in which the validity of the arrest or the conduct of the officer is an issue.

(d) The admissibility of all test results shall be governed according to the provisions of § 40-717.2. (Apr. 9, 1997, D.C. Law 11-201, § 4, 43 DCR 4390; Apr. 9, 1997, D.C. Law 11-248, § 4, 44 DCR 1242.)

Section references. — This section is referred to in § 25-126.6.

Temporary addition of section. — See note to § 25-126.1.

Emergency act amendments. — See note to § 25-126.1.

Legislative history of Law 11-201. — See note to § 25-127.1.

Legislative history of Law 11-248. — See note to § 25-126.1.

§ 25-126.4. Penalties.

(a) Any person violating any provision of § 25-127.1(a) or (b), upon conviction for the first offense, shall be fined an amount not to exceed $500, imprisoned for not more than 90 days, or both; upon conviction for a second offense within a 15-year period, the person may be fined an amount not to exceed $5,000, imprisoned for not more than one year, or both; and, upon conviction for a third or subsequent offense within a 15-year period, the person may be fined an amount not to exceed $10,000, imprisoned for not more than one year, or both.

(b) Any person violating any provision of § 25-127.1(c) shall, upon conviction for the first offense, be fined an amount not to exceed $300, imprisoned for not more than 30 days, or both; upon conviction for a second offense within a 15-year period, be fined an amount not to exceed $1,000, imprisoned for not more than 90 days, or both; and, upon conviction for the third or subsequent offense within a 15-year period, be fined an amount not to exceed $5,000, imprisoned for not more than one year, or both. (Apr. 9, 1997, D.C. Law 11-201, § 5, 43 DCR 4390; Apr. 9, 1997, D.C. Law 11-248, § 5, 44 DCR 1242.)

Section references. — This section is referred to in § 25-126.6.

Temporary addition of section. — See note to § 25-126.1.

Emergency act amendments. — See note to § 25-126.1.

Legislative history of Law 11-201. — See note to § 25-127.1.

Legislative history of Law 11-248. — See note to § 25-126.1.

§ 25-126.5. Prima facie evidence of intoxication.

If, as a result of the operation of any vessel or watercraft, any person is tried in any court of competent jurisdiction within the District for operating such vessel or watercraft while under the influence of intoxicating liquor or while the ability to operate a vessel is impaired by the consumption of intoxicating liquor in violation of § 25-127.1, or manslaughter committed in the operation of such vessel or watercraft in violation of § 22-2405, and in the course of such trial there is received in evidence, based upon a chemical test, competent proof to the effect that at the time of such operation:

(1) Defendant's blood contained less than .05% by weight, of alcohol, defendant's urine contained less than .06%, by weight, of alcohol, or that at the time of the test less than .24 micrograms of alcohol were contained in one milliliter of his or her breath, consisting of substantially alveolar air, this evidence shall not establish a presumption that the defendant was or was not, at the time, under the influence of intoxicating liquor, but it may be considered with other competent evidence in determining whether the defendant was under the influence of intoxicating liquor; and

(2) Defendant's blood contained .05% or more, by weight of alcohol, defendant's urine contained .06% or more, by weight of alcohol, or that at the

time of the test, 24 micrograms or more of alcohol were contained in one milliliter of his or her breath, consisting of substantially alveolar air, this evidence shall constitute prima facie proof that the defendant was, at the time, under the influence of intoxicating liquor and that the defendant was operating or in control of a vessel, or the defendant's ability to operate a vessel was impaired by the consumption of intoxicating liquor. (Apr. 9, 1997, D.C. Law 11-201, § 6, 43 DCR 4390; Apr. 9, 1997, D.C. Law 11-248, § 6, 44 DCR 1242.)

Section references. — This section is referred to in § 25-126.1.

Temporary addition of section. — See note to § 25-126.1.

Emergency act amendments. — See note to § 25-126.1.

Legislative history of Law 11-201. — See note to § 25-127.1.

Legislative history of Law 11-248. — See note to § 25-126.1.

§ 25-126.6. Refusal to submit to testing; prosecution of violations.

(a) The refusal to submit to either of the 2 tests required in this section and §§ 25-127.1 through 25-127.5 shall be admissible in any civil or criminal proceeding arising as a result of the acts alleged to have been committed by the person prior to arrest. Any refusal to submit to any test as required by this section and §§ 25-127.1 through 25-127.5 shall constitute a separate offense, punishable, upon conviction, by a $500 fine, imprisonment of 90 days, or both.

(b) The Corporation Counsel of the District of Columbia, or his or her assistants, shall prosecute violations of this section and §§ 25-127.1 through 25-127.5, in the name of the District of Columbia.

(c) The Harbor Master shall be directly responsible for enforcing this section and §§ 25-127.1 through 25-127.5 and shall ensure that the public is made aware of the District's aggressive enforcement policy through a continual public awareness campaign. (Apr. 9, 1997, D.C. Law 11-201, § 7, 43 DCR 4390; Apr. 9, 1997, D.C. Law 11-248, § 7, 44 DCR 1242.)

Section references. — This section is referred to in § 25-126.6.

Temporary addition of section. — See note to § 25-126.1.

Emergency act amendments. — See note to § 25-126.1.

Legislative history of Law 11-201. — See note to § 25-127.1.

Legislative history of Law 11-248. — See note to § 25-126.1.

§ 25-127. Operation of locomotive, streetcar, elevator, watercraft, or horse-drawn vehicle by intoxicated person prohibited.

(a) No person shall be intoxicated while in charge of or operating any locomotive or while acting as a conductor or brakeman of a car or train of cars, or while in charge of or operating any streetcar, elevator, or horse-drawn vehicle in the District of Columbia.

* * * * *

(Apr. 9, 1997, D.C. Law 11-201, § 8(a), 44 DCR 4390; Apr. 9, 1997, D.C. Law 11-248, § 8(a), 44 DCR 1242.)

Effect of amendments. — D.C. Law 11-248 deleted "watercraft" following "elevator" in (a).

Temporary amendment of section. — D.C Law 11-201 deleted "watercraft" following "elevator" in (a).

Section 10(b) of D.C Law 11-201 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 8(a) of the Boating While Intoxicated Emergency Act of 1996 (D.C. Act 11-346, August 8, 1996, 43 DCR 4621), § 8(a) of the Boating While Intoxicated Congressional Review Emergency Act of 1996 (D.C. Act 11-411, October 28, 1996, 43 DCR 6063), and § 8(a) of the Boating While Intoxicated Second Congressional Review Emergency Act of 1996 (D.C. Act 11-469, December 30, 1996, 44 DCR 179), and § 8(a) of the Boating While Intoxicated Congressional Review Emergency Act of 1997 (D.C. Act 12-52, March 31, 1997, 44 DCR 2204),

For temporary addition of a new subchapter, consisting of §§ 25-127a.1 through 25-127a.6, see § 2-7 of the Boating While Intoxicated Congressional Review Emergency Act of 1997 (D.C. Act 12-52, March 31, 1997, 44 DCR 2204).

Section 10 of D.C. Act 12-52 provides for the application of the act.

Legislative history of Law 11-201. — See note to § 25-126.1.

Legislative history of Law 11-248. — See note to § 25-126.1.

§ 25-128. Drinking of alcoholic beverage in public place prohibited; intoxication prohibited.

(a) Except as provided in subsections (b) and (c) of this section, no person in the District of Columbia shall drink or possess, in an opened container, any alcoholic beverage in any of the following places:

(1) In any street, alley, park, or parking;

(2) In any vehicle in any street, alley, park, or parking;

(3) In or upon any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation, that are not licensed pursuant to this chapter; in any place to which the public is invited for which a license has not been issued under this chapter, permitting the sale and consumption of such alcoholic beverage upon such premises licensed under § 25-111(a)(12); or

(4) In any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverages on the premises is prohibited by this chapter or by the regulations promulgated thereunder, or in any place for which a license under § 25-111(a)(12) has been issued at a time when the consumption of such alcoholic beverages on the premises is prohibited by regulations promulgated under this chapter.

(b) Subsection (a)(1) of this section shall not apply when drinking or possession of alcoholic beverages occurs in or on a structure which projects upon the parking, and which is an integral, structural part of a private residence, such as, without limitation, a front porch, terrace, bay window, or vault, and when done by, or with the permission of, the owner or resident.

(c) Subsection (a)(2) of this section shall not apply to possession of an opened container of alcoholic beverages contained in a trunk, cargo area, or storage compartment of a vehicle that is inaccessible from the passenger area of that vehicle, or, if the vehicle does not have a storage compartment, in the section of the vehicle most inaccessible to the passenger area.

(d) No person in the District, whether in or on public or private property, shall be intoxicated and endanger the safety of that person or the person or property of any other person.

(e) Any person violating the provisions of subsections (a) and (d) of this section shall be punished by a fine of not more than $100 or by imprisonment for not more than 90 days, or both.

(f) Any person in the District who is intoxicated in public who is not conducting himself in such manner as to endanger the safety of himself or of any other person or of property, shall be dealt with in accordance with § 24-524. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14; June 29, 1953, 67 Stat. 104, ch. 159, § 404(h); Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 2(a); 1973 Ed., § 25-128; Sept. 29, 1982, D.C. Law 4-157, § 13, 29 DCR 3617; Dec. 3, 1985, D.C. Law 6-64, § 2, 32 DCR 5970; Mar. 26, 1999, D.C. Law 12-206, § 2(b), 45 DCR 8430.)

Effect of amendments. — D.C. Law 12-206 rewrote the section.

Temporary amendment of section. — Section 2(c) of D.C. Law 12-48, in (a), designated the existing text as (1) and added a new (2) to read as follows:

"(2) No person shall bring, or have in his or her possession, anywhere on the premises of the DC Arena, including space referred to in § 25-111(a) (7) (G-1), any container used to hold or store beverages or liquids of any kind, including, but not limited to, bottles and cans. This section shall not apply to a person duly authorized or licensed by the Board to possess, sell, give away, transport, or store alcoholic beverages or containers on the premises of the DC Arena, or to any employee or agency acting for any such duly authorized or licensed person, or to any container provided on the premises of the DC Arena by the lessee or its concessionaires and tenants."

Section 5(b) of D.C. Law 12-48 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Alcoholic Beverage Control DC Arena Emergency Amendment Act of 1997 (D.C. Act 12-121, August 1, 1997, 44 DCR 4645), § 2(c) of the Alcoholic Beverage Control DC Arena Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-174, October 30, 1997, 44 DCR 6915), and § 2(c) of the Alcoholic Beverage Control DC Arena Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-290, February 27, 1998, 45 DCR 1749).

Section 5 of D.C. Act 12-290 provides for the application of the act.

Legislative history of Law 12-48. — See note to § 25-103.

Legislative history of Law 12-206. — See note to § 25-103.

Cited in United States v. Howard, 984 F. Supp. 31 (D.D.C. 1997); Parrish v. District of Columbia, App. D.C., 718 A.2d 133 (1998).

§ 25-128.1. Prohibition on beverage storage containers in the DC Arena.

No person shall bring, or have in his or her possession, anywhere on the premises of the DC Arena, including space referred to in § 25-111(a)(7)(G-i)(ii), any container used to hold or store beverages or liquids of any kind, including, but not limited to, bottles and cans. This section shall not apply to a person duly authorized or licensed by the Board to possess, sell, give away, transport, or store alcoholic beverages or containers on the premises of the DC Arena, or to any employee or agency acting for any such duly authorized or licensed person, or to any container provided on the premises of the DC Arena by the lessee or its concessionaires and tenants. (Jan. 24, 1934, 48 Stat. 319, Ch. 4, § 28a, as added Mar. 26, 1999, D.C. Law 12-202, § 2(c), 45 DCR 8412.)

Effect of amendments. — D.C. Law 12-202 added this section.

Emergency act amendments. — For temporary addition of section, see § 2(c) of the Alcoholic Beverage Control DC Arena Emergency Amendment Act of 1998 (D.C. Act 12-478, October 28, 1998, 45 DCR 8010) and § 2(c) of the Alcoholic Beverage Control DC Arena Second Emergency Act of 1998 (D.C. Act 12-551, December 24, 1998, 45 DCR 517).

Section 5 of D.C. Act 12-478 provides for the application of the act.

Section 5 of D.C. Act 12-551 provides for the application of the act.

For temporary amendment of § 5 of the Alcoholic Beverage Control DC Arena Second Emergency Amendment Act of 1998 (D.C. Act 12-551, December 24, 1998, 45 DCR 517), see § 3 of the Omnibus Regulatory Reform and Alcoholic Beverage Control DC Arena Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-1, January 29, 1999, 46 DCR 2284).

Legislative history of Law 12-202. — Law 12-202, the "Alcoholic Beverage Control DC Arena Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-294, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 13, 1998, it was assigned Act No. 12-488 and transmitted to both Houses of Congress for its review. D.C. Law 12-202 became effective on March 26, 1999.

§ 25-130. Purchase, possession or consumption by persons under 21; misrepresentation of age; penalties.

* * * * *

(b-1) Any person under 21 years of age who falsely represents his or her age for the purpose of procuring alcoholic any beverage shall be deemed guilty of a misdemeanor and be fined for each offense not more than $300, and in default in the payment of the fine shall be imprisoned not exceeding 30 days.

(b-2) A civil fine may be imposed as an alternative sanction for any infraction of this section, or any rules or regulations issued under the authority of this chapter, pursuant to §§ 6-2701 to 6-2723 ("Civil Infractions Act"). Adjudication of any infraction of this section shall be pursuant to §§ 6-2701 to 6-2723.

(c) In addition to the penalties provided in subsections (b-1) and (b-2) of this section, any person who violates any provision of this section shall be subject to the following additional penalties:

* * * * *

(Apr. 9, 1997, D.C. Law 11-187, § 2, 43 DCR 4515.)

Effect of amendments.

D.C. Law 11-187 inserted (b-1) and (b-2); and substituted "subsections (b-1) and (b-2) of this section" for "§ 25-132" in the introductory paragraph of (c).

Legislative history of Law 11-187. — Law 11-187, the "Alcoholic Beverage Underage Penalties Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-606, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-340 and transmitted to both Houses of Congress for its review. D.C. Law 11-187 became effective on April 9, 1997.

§ 25-131. Issuance of new permits under Beverage License Act of 1933 forbidden; surrender of permit and refund of fees.

,After the date of the approval of this chapter, no permit shall be issued under the Act of Congress entitled An Act to provide revenue for the District of Columbia by the taxation of beverages and for other purposes, approved April 5, 1933, and no permits issued thereunder shall be renewed, but the Mayor is hereby authorized to extend the expiration dates of permits issued under said Act to a date designated by him not to exceed 60 days after the approval of this chapter, upon such terms and conditions, including the payment of such fees as

the Mayor may prescribe. Any permittee thereunder may make an application for a license under this chapter and, if said application is approved by the Board, such permittee shall surrender his permit and he shall be allowed a refund of the permit fee prorated as hereinafter provided. Any permittee under said Act of April 5, 1933, may surrender his permit and receive a refund of the permit fee prorated from the date of surrender of such permit to the date of expiration thereof. All such refunds shall be paid from the permanent indefinite appropriation for refunding erroneously paid taxes in the District of Columbia. All permits issued under said Act of April 5, 1933, shall remain in force and effect for the respective periods for which they were issued, unless sooner surrendered. After the approval of this chapter, no taxes shall be collected under § 11 of the Act approved April 5, 1933. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 31; 1973 Ed., § 25-131; Sept. 29, 1982, D.C. Law 4-157, § 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(10), 30 DCR 5927; Mar. 14, 1985, D.C. Law 5-159, § 25(d), 32 DCR 30; Apr. 9, 1997, D.C. Law 11-255, § 21(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in the first sentence.

Legislative history of Law 11-255. — See note to § 25-108.

TITLE 26. BANKS AND OTHER FINANCIAL INSTITUTIONS.

CHAPTER 1. BANKING INSTITUTIONS IN GENERAL.

§ 26-102. Same — Examinations; applicable federal provisions; establishment and maintenance of reserves.

* * * * *

(d) After April 11, 1986, subsection (c) of this section shall not apply to banks which are not national banks. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 714; June 25, 1906, 34 Stat. 458, ch. 3533; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 3; 1973 Ed., § 26-102; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(5), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168; Apr. 9, 1997, D.C. Law 11-255, § 22, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (d).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 26-103. Banking businesses to be organized under local or federal provisions; approval of Superintendent of Banking and Financial Institutions required; liquidation of solvent institutions; discontinuance of operation; violations; establishment of international banking facility.

(a) No banking business shall be done in the District of Columbia except by corporations organized in accordance with the provisions of this Code, as amended, or by national banking associations organized in accordance with the laws of the United States or by banks organized in accordance with the laws of another state, except that this subsection shall not apply to:

* * * * *

(2) Individuals, partnerships, associations, or corporations primarily engaged as brokers in buying, selling, exchanging, and/or otherwise dealing in stocks, bonds, and/or other securities, for the account of others, and incidentally thereto conducts banking transactions; and

* * * * *

(b) No corporation shall engage in or do the business of a bank of deposit or a fiduciary business in the District of Columbia nor shall any branch be established to carry on any phase of such banking or fiduciary business in the District of Columbia until the approval and consent of the Superintendent of Banking and Financial Institutions is secured. The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any place of business located in the District of Columbia, at which deposits are received, or checks paid, or money lent, or at which the public is served or any phase of business conducted by the parent institution or unless the branch is otherwise permitted by applicable law of the District of Columbia or by federal law.

* * * * *

(June 13, 1996, D.C. Law 11-142, § 13, 43 DCR 2159; Apr. 9, 1997, D.C. Law 11-255, § 23, 44 DCR 1271.)

Effect of amendments.

D.C. Law 11-142 inserted "or by banks organized in accordance with the laws of another state" in the introductory language of (a), and added the language beginning "or unless the branch" at the end of (b).

D.C. Law 11-255 validated a previously made stylistic and technical correction in (a)(2).

Legislative history of Law 11-142. — Law 11-142, the "Banking and Branching Act of 1996," was introduced in Council and assigned Bill No. 11-321, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on March 5, 1996, and April 2, 1996, respectively. Signed by the Mayor on April 16, 1996, it was assigned Act No. 11-258 and transmitted to both Houses of Congress for its review. D. C. Law 11-142 became effective on June 13, 1996.

Legislative history of Law 11-255. — See note to § 26-102.

§ 26-111. Utility bill payments services.

Emergency act amendments. — For temporary addition of § 26-112, see § 12 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114) and § 13 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923).

Section 16 of D.C. Act 12-309 provides for the application of the act.

CHAPTER 4. TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS.

§ 26-401. Manner of formation; purposes.

Corporations may be formed within the District of Columbia for the purposes hereinafter mentioned in the following manner: any number of natural persons, citizens of the United States, not less than 25, may associate themselves together to form a company for the purpose of carrying on, in the District of Columbia, any one of the 3 classes of business herein specified, to wit: (1) a safe deposit, trust, loan, and mortgage business; (2) a title insurance, loan, and morgage business; or (3) a security, guarantee, indemnity, loan, and mortgage business; provided, that the capital stock of any of said companies shall not be less than $1,000,000 except as otherwise provided in § 35-1516, and that any of said companies may also do a storage business when their capital stock amounts to the sum of not less than $1,200,000. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 715; Apr. 16, 1966, 80 Stat. 121, Pub. L. 89-399, § 1(b); 1973 Ed., § 26-301; Apr. 9, 1997, D.C. Law 11-255, § 24(a), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (2).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 26-404. Organization certificate; execution; contents.

The persons referred to in § 26-401 shall, under their hands and seals, execute before some officer in said District competent to take the acknowledgment of deeds, an organization certificate, which shall specifically state:

* * * * *

(4) The number of its directors and the names and residences of the officers who for the first year are to manage the affairs of the company; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 24(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (4).

Legislative history of Law 11-255. — See note to § 26-401.

§ 26-409. Powers of companies; liability as trustee.

All companies organized under this chapter are hereby declared to be corporations possessed of the powers and functions of corporations generally, and shall have power:

* * * * *

(4) To loan money; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 24(c), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (4).

Legislative history of Law 11-255. — See note to § 26-401.

CHAPTER 5. BUILDING ASSOCIATIONS.

Sec.
26-506. Foreign associations.

§ 26-506. Foreign associations.

(a) No foreign association shall make loans of any kind or transact any building and loan business within the District of Columbia or maintain an office in the District of Columbia for the purpose of transacting such business until it procures from the Superintendent of Banking and Financial Institutions a certificate of authority to do such business in said District, after complying with the following provisions:

* * * * *

(4) It shall pay to the Collector of Taxes the following fees:

(A) For filing an application for admission to do business in the District of Columbia, $500; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 24(d), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (a)(4)(A).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

CHAPTER 7. MONEY LENDERS; LICENSES.

Sec.
26-701. Businesses required to procure license and pay tax; appointment of resident agent; service of process or notice.
26-703. Same — Bond; actions thereon; use of certified copy; renewal and refiling.
26-710. Exemption of certain persons and businesses; service of process thereupon.

§ 26-701. Businesses required to procure license and pay tax; appointment of resident agent; service of process or notice.

(a) It shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than 6 % per annum is charged on any security of any kind, direct or collateral, tangible

or intangible, without procuring license; and all persons, firms, voluntary associations, joint-stock companies, incorporated societies, and corporations engaged in said business shall pay a license tax of $500 per annum to the District of Columbia. No license shall be granted to any person, firm, or voluntary association unless such person and the members of any such firm or voluntary association shall be bona fide residents of the District of Columbia, and no license shall be granted for a period longer than 1 year, and no license shall be granted to any joint-stock company, incorporated society, or corporation unless and until such company, society, or corporation shall, in writing and in due form, to be first approved by and filed with the Mayor of the District of Columbia, appoint an agent, resident in the District of Columbia, upon whom all judicial and other process or legal notice directed to such company, society, or corporation may be served. And in the case of death, removal from the District, or any legal disability or disqualification of any such agent, service of such process or notice may be made upon the Director of the Department of Licenses, Investigation and Inspections of the District of Columbia.

(b) Any license issued pursuant to this section shall be issued as a Class A Financial Services endorsement to a master business license under the master business license system as set forth in subchapter 1A of Chapter 28 of Title 47 of the District of Columbia Code. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 1; Mar. 3, 1917, 39 Stat. 1006, ch. 160; 1973 Ed., § 26-601; Apr. 20, 1999, D.C. Law 12-261, § 2003(r), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (b).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

§ 26-703. Same — Bond; actions thereon; use of certified copy; renewal and refiling.

Each application shall be accompanied by a bond to the District of Columbia in the penal sum of $5,000, with 2 or more sufficient sureties, and conditioned that the obligor will not violate any law relating to such business. The execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business therein shall be equivalent to the execution thereof by 2 sureties, and such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. If any person shall be aggrieved by the misconduct of any such licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation, or by his, their, or its violation of any law relating to such business, and shall recover a judgment therefor, such person or his personal representative or heirs or distributees may, after a return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action in his own name upon such bond herein required in any court having jurisdiction of the amount claimed. The Mayor of the District of Columbia shall furnish to anyone applying therefor a certified copy of any such bond filed with him, upon the payment of a fee of $.25, and such certified copy shall be prima facie

evidence in any court that such bond was duly executed and delivered by the person, firm, voluntary association, joint-stock company, incorporated society, or corporation whose names appear thereon. Said bond shall be renewed and refiled annually in October of each year, or the licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall within 30 days thereafter, cease doing business, and their license shall be revoked by the said Mayor, but said bond until renewed and refiled as aforesaid shall be and remain in full force and effect. The Mayor may waive the bonding requirements of this section, if alternative surety arrangements are secured, in cases involving parties specified in § 26-710. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 3; 1973 Ed., § 26-603; Apr. 9, 1997, D.C. Law 11-171, § 2(a), 43 DCR 4484.)

Effect of amendments. — D.C. Law 11-171 added the last sentence.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Community Development Corporations Money Lender License Tax Exemption Congressional Recess Emergency Amendment Act of 1996 (D.C. Act 11-399, October 9, 1996, 43 DCR 5695), § 2(a) of the Community Development Corporations Money Lender License Tax Exemption Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-473, December 30, 1996, 44 DCR 195), and § 2(a) of the Community Development Corporations Money Lender License Tax Exemption Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-54, March 31, 1997, 44 DCR 2216).

Section 4 of D.C. 11-473 provides for the application of the act.

Section 4 of D.C. Act 12-54 provides for the application of the act.

Legislative history of Law 11-171. — Law 11-171, the "Community Development Corporations Money Lender License Tax Exemption Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-473, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-318 and transmitted to both Houses of Congress for its review. D.C. Law 11-171 became effective on April 9, 1997.

§ 26-710. Exemption of certain persons and businesses; service of process thereupon.

(a) Nothing contained in this chapter shall be held to apply to the legitimate business of national banks, licensed bankers, licensed mortgage brokers, licensed mortgage lenders, any person exempt from licensure under § 26-1002 if the activity involves making or brokering a mortgage, trust companies, savings banks, building and loan associations, small business investment companies licensed and operating under the Small Business Investment Act of 1958, or to life insurance companies. As used in this section the term "life insurance companies" means and includes any life insurance company authorized to do business in the District of Columbia pursuant to Chapters 3 to 8 of Title 35 and any other life insurance company which has a valid, current license to do business as such in any state of the United States.

* * * * *

(c) For the purposes of this section, the term:

(1) "Community Development Corporation" or "CDC" means any community development corporation recognized by, and under contract with, the District of Columbia Department of Housing and Community Development (or any successor agency) that is engaged in business and economic development activities in the form of making microloans through the use of funds loaned to them by nationally or locally chartered banks or financial institutions for the

specific purpose of microlending, and which organization is organized under Chapter 5 of Title 29, and whose articles of incorporation and bylaws are consistent with rules and regulations issued by the Mayor of the District of Columbia pursuant to subchapter II of Chapter 22 of Title 1.

(2) "Microloans" or "microlending" means a CDC engaging in the practice of making or issuing any loans up to, and including, $25,000 to any person engaged in business within the District of Columbia.

(3) "Person" means any natural person, partnership, limited partnership, or corporation, including corporations taxed under Subchapter S of the Internal Revenue Code.

(d) No money lender license tax contained in this chapter shall be held to apply to a CDC engaged in microlending where the funds used for the microlending program were loaned to the CDC by a nationally or locally chartered bank or financial institution for the specific purpose of microlending, provided that the CDC operates and makes loans only in the geographical service area defined in their agreements with the District of Columbia Department of Housing and Community Development. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 10; June 11, 1960, 74 Stat. 196, Pub. L. 86-502, § 7; Dec. 5, 1963, 77 Stat. 344, Pub. L. 88-191, § 1; 1973 Ed., § 26-610; Feb. 24, 1987, D.C. Law 6-188, § 2(d), 33 DCR 7687; Sept. 9, 1996, D.C. Law 11-155, § 23(a), 43 DCR 4213; Apr. 9, 1997, D.C. Law 11-171, § 2(b), 43 DCR 4484; June 6, 1998, D.C. Law 12-116, § 4, 45 DCR 1959.)

Section references.

This section is referred to in § 26-703.

Effect of amendments. — D.C. Law 11-155 inserted "licensed mortgage brokers, licensed mortgage lenders" in the first sentence in (a).

D.C. Law 11-171 added (c) and (d).

D.C. Law 12-116, in (a), inserted "any person exempt from licensure under § 26-1002 if the activity involves making or brokering a mortgage."

Temporary amendments of section. — Section 4 of D.C. Law 12-3 inserted "any person exempt from licensure under § 26-1002 if the activity involves making or brokering a mortgage" in the first sentence in (a).

Section 6(b) of D.C. Law 12-3 provides that the act shall expire after 225 days of its having taken effect.

Section 4 of D.C. Law 12-101 inserted "any person exempt from licensure under § 26-1002 if the activity involves making or brokering a mortgage" in the first sentence in (a).

Section 6(b) of D.C. Law 12-101 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 2(b) of the Community Development Corporations Money Lender License Tax Exemption Congressional Recess Emergency Amendment Act of 1996 (D.C. Act 11-399, October 9, 1996, 43 DCR 5695), § 2(b) of the Community Development Corporations Money Lender License Tax Exemption Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-473, December 30, 1996, 44 DCR 195), and § 2(b) of the Community Development Corporations Money Lender License Tax Exemption Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-54, March 31, 1997, 44 DCR 2216).

Section 4 of D.C. 11-473 provides for the application of the act.

Section 4 of D.C. Act 12-54 provides for the application of the act.

For temporary amendment of section, see § 4 of the Mortgage Lender and Broker Act of 1996 Emergency Amendment Act of 1997 (D.C. Act 12-23, March 3, 1997, 44 DCR 1773), § 4 of the Mortgage Lender and Broker Act of 1996 Emergency Amendment Act of 1997 (D.C. Act 12-245, January 13, 1998, 45 DCR 656), and § 4 of the Mortgage Lender and Broker Act of 1996 Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-308, March 20, 1998, 45 DCR 1920)

Section 6 of D.C. Act 12-245 provided for application of the act.

Section 6 of D.C. Act 12-308 provided for the application of the act.

Legislative history of Law 11-155. — Law 11-155, the "Mortgage Lender and Broker Act of 1996," was introduced in Council and assigned Bill No. 11-637, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-309 and transmitted to both Houses of Congress for its review. D.C.

Law 11-155 became effective on September 9, 1996.

Legislative history of Law 11-171. — See note to § 26-703.

Legislative history of Law 12-3. — Law 12-3, the "Mortgage Lender and Broker Act of 1996 Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-82. The Bill was adopted on first and second readings on February 4, 1997, and March 4, 1997, respectively. Signed by the Mayor on March 19, 1997, it was assigned Act No. 12-45 and transmitted to both Houses of Congress for its review. D.C. Law 12-3 became effective on May 23, 1997.

Legislative history of Law 12-101. — Law 12-101, the "Mortgage Lender and Broker Act of 1996 Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-475. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 27, 1998, it was assigned Act No. 12-277 and transmitted to both Houses of Congress for its review. D.C. Law 12-101 became effective on April 30, 1998.

Legislative history of Law 12-116. — Law 12-116, the "Mortgage Lender and Broker Act of 1996 Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-426, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on February 3, 1998, and March 3, 1998, respectively. Signed by the Mayor on March 17, 1998, it was assigned Act No. 12-313 and transmitted to both Houses of Congress for its review. D.C. Law 12-116 became effective on June 6, 1998.

CHAPTER 8. INTERSTATE BANKING AND BRANCHING.

Subchapter I. Regional Interstate Banking.

Sec.

Subchapter II. Interstate Banking and Branching.

Sec.

Subchapter I. Regional Interstate Banking.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 11-142, the preexisting text of Chapter 8, which includes §§ 26-801 through 26-813, has been designated as subchapter I of this chapter.

§ 26-801. Definitions.

For the purpose of this subchapter, the term:

* * * * *

(6) "Deposits" means all demand, time, and savings deposits, without regard to the location of the depositor. The term "deposits" shall not include any deposits by banks. For purposes of this subchapter, determination of deposits shall be made with reference to regulatory reports of conditions or similar reports made by or to state and federal regulatory authorities.

* * * * *

(11A) "Person" means an individual, corporation, trust, joint venture, company, association, firm, partnership, society, joint stock company, pool syndicate, sole proprietorship, unincorporated organization, fiduciary business, or any other entity not specifically listed in this subchapter.

* * * * *

(Nov. 23, 1985, D.C. Law 6-63, § 2, 32 DCR 5954; Apr. 11, 1986, D.C. Law 6-107, § 2(a), 33 DCR 1168; Apr. 30, 1988, D.C. Law 7-104, § 27(a), 35 DCR 147; Mar. 16, 1989, D.C. Law 7-187, § 2(a), 35 DCR 8648; Aug. 17, 1991, D.C. Law 9-42, § 2(a), 38 DCR 4981.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in the introductory language and in (6) and (11A).

§ 26-802.1. Establishment of Office of Banking and Financial Institutions; Superintendent; Council review of rules.

* * * * *

(b) The Superintendent shall:

(1) Administer this subchapter;

* * * * *

(10) Upon confirmation, administer, to the extent provided in this subchapter, the provisions of this subchapter concerning interstate banking;

(11) Assure that all financial institutions under the supervision or control of the Office of Banking and Financial Institutions and all banks and bank holding companies seeking entry into the District of Columbia under the interstate banking provisions in this subchapter provide financial services to the public in a manner that fosters the development and revitalization of housing and commercial corridors in underserved neighborhoods in the District, helps meet the credit and deposit service needs of lower income and minority residents of the District, and expands financial and technical support for small, minority, and women-owned businesses;

* * * * *

(14) Issue rules necessary to carry out the purposes of this subchapter;

(15) Receive and investigate complaints or initiate an investigation in regard to a possible violation of this subchapter or § 26-103 ("Banking Business Act");

* * * * *

(18) If an investigation warrants, hold a hearing, issue a subpoena to compel the attendance of a witness, administer an oath, and take the testimony of any person under oath in regard to any violation or possible violation of this subchapter or § 26-103;

(19) If an investigation warrants, issue a subpoena to compel the production of any document, paper, book, record, or other evidence in regard to any violation or possible violation of this subchapter or § 26-103;

(20) Issue a cease and desist order related to any violation or possible violation of this subchapter or § 26-103 pursuant to § 26-811; and

(21) Pursue, through the Office of the Corporation Counsel, the obtaining of a restraining order, the appointment of a receiver, the involuntary dissolution of a corporation, or the freezing or seizure of assets of a corporation or person related to a violation or possible violation of this subchapter or § 26-103 pursuant to § 26-811.

(b-1) The Superintendent shall, upon a finding of a violation of this subchapter or § 26-103, refer the matter to the Corporation Counsel or United States Attorney for civil or criminal enforcement, as the case may warrant.

(c) All rules which the Superintendent issues pursuant to this subchapter shall be transmitted to the Council for a 45-day review period, excluding Saturdays, Sundays, holidays, and days when Council is in recess. The Council may adopt a resolution disapproving the rules, in whole or in part, within the 45-day review period. If the Council, by resolution, does not approve or disapprove the rules before the expiration of the 45-day review period, the rules shall become effective at the expiration of the 45-day review period.

* * * * *

(Nov. 23, 1985, D.C. Law 6-63, § 3a, as added Apr. 11, 1986, D.C. Law 6-107, § 2(b), 33 DCR 1168; Aug. 17, 1991, D.C. Law 9-42, § 2(b), 38 DCR 4981; Feb. 5, 1994, D.C. Law 10-68, § 25(a), 40 DCR 6311.)

Section references. — This section is referred to in §§ 1-603.1, 26-802.4, and 26-804.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(2) of D.C. Law 12-60 provided that all fees received pursuant to § 26-802.1(b)(13) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in (b)(1), (10), (11), (14), (15), and (18) through (21), (b-1) and (c).

§ 26-802.2. Definitions.

Repealed.

(Mar. 20, 1998, D.C. Law 12-60, § 1802, 44 DCR 7378; Mar. 26, 1999, D.C. Law 12-175, § 1902(a), 45 DCR 7193.)

Emergency act amendments. — For temporary repeal of section, see § 1502(a) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794) and § 1502(a) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 1504 of D.C. Act 12-401 provides for the application of the act.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Application of D.C. Law 12-175. — Section 1904 of D.C. Law 12-175 provided that the act shall apply as of October 1, 1998.

§ 26-802.3. Establishment of special account.

(a) In accordance with D.C. Code § 47-131(c)(4), there is hereby established within the General Fund of the District of Columbia a special account, to which shall be credited, without regard to fiscal year limitation pursuant to an act of Congress, the fees that are identified in § 26-802.4. No revenues deposited into the continuing, non-lapsing special account may be obligated or spent in any year without a Congressional appropriation. Revenues in this continuing, non-lapsing special account that are carried over into a succeeding fiscal year may not be obligated or spent in the succeeding year without a new Congressional appropriation that permits such obligation or expenditure.

(b) Subject to the applicable laws relating to the appropriation of District funds, monies received and deposited in the special account shall be used to defray the expenses of the Office of Banking and Financial Institutions in the discharge of its administrative and regulatory duties as prescribed by law. The special account shall not be used by any other District government agency.

(c) The special account shall be continuing. Revenues deposited into the special account shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available to the Office of Banking and Financial Institutions for the uses and purposes set forth in § 26-802.1, subject to authorization by Congress in an appropriations act. (Mar. 20, 1998, D.C. Law 12-60, § 1803, 44 DCR 7378; Mar. 26, 1999, D.C. Law 12-175, § 1902(b), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 25, 46 DCR 2118.)

Effect of amendments. — D.C. Law 12-175 rewrote the section.

D.C. Law 12-264 added the last two sentences in (a).

Temporary addition of section. — Sections 1802 through 1804 of D.C. Law 12-59 added §§ 26-802.3 and 26-802.4.

Section 2001(b) of D.C. Law 12-59 provides the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of §§ 26-802.3 and 26-802.4, see §§ 1802 to 1804 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196) and §§ 1802 to 1804 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 1502(b) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1502(b) of the Fiscal Year 1999 Budget Support Congres-

sional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Legislative history of Law 12-59. — Law 12-59, the "Fiscal Year 1998 Revised Budget Support Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the "Fiscal Year 1998 Revised Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-175. — See note to § 26-802.2.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Application of D.C. Law 12-175. — See note to § 26-802.2.

Office of Banking and Financial Institutions Enterprise Fund Establishment Act of 1997. — See note to § 26-802.2.

§ 26-802.4. Fees credited to the special account.

All fees received pursuant to the following statutory provisions shall be credited to the Office of Banking and Financial Institutions special account:

(1) Sections 26-804(b)(2) and (c)(1)(A).

(2) Sections 26-802.1(b)(13) and 26-806.1(a)(2).

(3) Sections 26-853(b), 26-856(b), and 26-857(a)(2).

(4) Sections 26-1003(f), 26-1005(a)(3), and 26-1007(d); and

(5) Any other statutory provision that requires the payment of a fee and that is a part of a law administered by the Office of Banking and Financial Institutions. (Mar. 20, 1998, D.C. Law 12-60, § 1804(1), 44 DCR 7378; Mar. 26, 1999, D.C. Law 12-175, § 1902(c), 45 DCR 7193.)

Effect of amendments. — D.C. Law 12-175 substituted "special account" for "Enterprise Fund" in the introductory language.

Temporary addition of section. — See note to § 26-802.3.

Emergency act amendments. — For temporary addition of sections, see note to § 26-802.3.

For temporary amendment of section, see § 1502(c) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794) and § 1502(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Legislative history of Law 12-59. — See note to § 26-802.3.

Legislative history of Law 12-60. — See note to § 26-802.3.

Legislative history of Law 12-175. — See note to § 26-802.2.

Application of Law 12-60. — See note to § 26-802.3.

Application of D.C. Law 12-175. — See note to § 26-802.2.

Office of Banking and Financial Institutions Enterprise Fund Establishment Act of 1997. — See note to § 26-802.2.

§ 26-804. Review of applications.

(a) Any person who conducts or seeks to conduct a class of business described in § 26-802.1(b)(4), (5), or (6) in the District shall file an application with the Superintendent for approval to do business in the District, unless the person is already chartered by the appropriate federal or District agency or

organized by virtue of the laws of any of the states of this Union and doing business pursuant to § 26-103(a)(1). Consistent with applicable federal law, all the applications, including any supporting documents, and any other information required to be submitted to the Superintendent shall be made available to the public. An application filed with the appropriate federal agency for approval to conduct a class of business described in § 26-802.1(b)(4), (5), or (6) and still pending approval or approved prior to April 11, 1986, shall not be subject to this section or the provisions of this subchapter. The Council shall file comments regarding the applications pending April 11, 1986. Any Council comments regarding a pending application filed prior to April 11, 1986, shall meet the requirements of the preceding sentence.

* * * * *

(c) Any authority granted to acquire any District bank holding company or District bank shall be contingent on the review of the Superintendent and Council as provided in this subsection. Upon the filing of a complete application, the following procedures shall apply:

(1)

* * * * *

(B) Until the Superintendent is appointed and confirmed in accordance with § 26-802.1, applications for acquisitions by regional and nonregional bank holding companies shall be reviewed in accordance with the standards set forth in both this subchapter and the procedures set forth in this section, and in the District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985, except that the period for submission and review of applications shall commence 45 days, excluding Saturdays, Sundays, holidays, and days of Council recess, before filing with the Federal Reserve Board.

* * * * *

(i) The Superintendent may issue rules providing for emergency circumstances under which applications may be exempted from the Council review requirement of this subchapter, if the Council has not disapproved the rules pursuant to § 26-802.1. (Nov. 23, 1985, D.C. Law 6-63, § 5, 32 DCR 5954; Apr. 11, 1986, D.C. Law 6-107, § 2(c), 33 DCR 1168; Feb. 24, 1987, D.C. Law 6-192, § 10, 33 DCR 7836; Apr. 30, 1988, D.C. Law 7-104, § 27(b), 35 DCR 147; Mar. 15, 1990, D.C. Law 8-84, § 2, 37 DCR 44; Mar. 15, 1990, D.C. Law 8-91, § 2, 37 DCR 776; Aug. 17, 1991, D.C. Law 9-42, § 2(c), 38 DCR 4981.)

Section references. — This section is referred to in §§ 1-3111, 26-801, 26-802.1, 26-802.4, 26-806.1, 26-807, 47-343, 47-344, and 47-351.10.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(1) of D.C. Law 12-60 provided that all fees received pursuant to §§ 26-804(b)(2) and 26-804(c)(1)(A) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

BB&T Corporation Acquisition of Franklin Bancorporation, Inc., Approval Resolution of 1998. — Pursuant to Resolution 12-519, effective June 2, 1998, the Council approved the recommendation of the Superintendent of the Office of Banking and Financial Institutions that the acquisition of Franklin Bancorporation, a District bank holding company, by BB&T Corporation, a regional bank holding company be approved.

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in (a), (c)(1)(B), and (i).

§ 26-805. Prohibited acts.

* * * * *

(b) Except as otherwise required by applicable federal law, a District bank holding company or a regional bank holding company that ceases to be a District bank holding company or a regional bank holding company shall, as soon as practicable, and, in all events, within 1 year after the event, divest itself of control of all District bank holding companies and all District banks. Divestiture shall not be required if (1) the District bank holding company or the regional bank holding company ceases to be a District bank holding company or a regional bank holding company, as the case may be, because of an increase in the deposits held by bank subsidiaries not located within the region and if the increase is not the result of an acquisition of a bank holding company or bank, or (2) a District bank or District bank holding company ceases to be a District bank or District bank holding company because of an acquisition authorized by this subchapter. (Nov. 23, 1985, D.C. Law 6-63, § 6, 32 DCR 5954; Apr. 11, 1986, D.C. Law 6-107, § 2(d), 33 DCR 1168.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in (b).

§ 26-806.1. Alternative entry by acquisition.

(a) Notwithstanding any other provisions of this subchapter, 90 days after April 11, 1986, any nonregional bank holding company may make application to the Superintendent for approval to acquire:

* * * * *

(Nov. 23, 1985, D.C. Law 6-63, § 7a, as added Apr. 11, 1986, D.C. Law 6-107, § 2(e), 33 DCR 1168.)

Section references. — This section is referred to in §§ 26-802.4, 26-804, and 26-807.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(2) of D.C. Law 12-60 provided that all fees received pursuant to § 26-806.1(a)(2) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in the introductory language of (a).

§ 26-807. Enforcement.

(a) An action for equitable or any other appropriate relief to enforce the provisions of this subchapter may be brought in any court of competent jurisdiction by:

* * * * *

(b) Each bank holding company making the submission to the Superintendent required by § 26-804 or § 26-806.1 shall include in that submission a statement identifying a registered agent and registered office for the bank holding company. The registered agent shall be an agent of the bank holding company upon whom process of law against the company may be served. All notices or demands required or permitted by law may be served upon the registered agent. The registered agent and office may be the same as that used by the District bank holding company or District bank sought to be acquired or established. The appointment of a registered agent for purposes of this section must meet the requirements imposed on a foreign corporation's appointment of a registered agent and office by § 29-399.7. If the bank holding company fails to properly appoint or maintain a registered agent and office in the District, the Mayor shall be an agent of the bank holding company upon whom any process of law, notice, or demand against the bank holding company may be served. All matters served upon the Mayor pursuant to this section shall be handled in the same manner as matters served upon the Mayor on behalf of foreign corporations pursuant to § 29-399.9(b) and (d). The appointment of a registered agent pursuant to this section may not be revoked or modified, except that a new registered agent may be substituted, so long as any liability for the fines imposed by this subchapter remains outstanding against the bank holding company. Upon satisfaction of any liability, the appointment may be revoked or otherwise modified, unless the bank holding company is otherwise required by law to maintain the registered agent and office. (Nov. 23, 1985, D.C. Law 6-63, § 8, 32 DCR 5954; Apr. 11, 1986, D.C. Law 6-107, § 2(f), 33 DCR 1168.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in the introductory language of (a) and in (b).

§ 26-807.1. Insurance.

(a) Any bank or trust company established or created pursuant to this subchapter shall be required to be insured with the Federal Deposit Insurance Corporation pursuant to 12 U.S.C. § 1811 et seq.

(b) Any savings and loan association established or created pursuant to this subchapter shall be required to be insured with the Federal Savings and Loan Insurance Corporation pursuant to 12 U.S.C. § 1724 et seq. (Nov. 23, 1985, D.C. Law 6-63, § 8a, as added Apr. 11, 1986, D.C. Law 6-107, § 2(g), 33 DCR 1168.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in (a) and (b).

§ 26-807.2. Penalties.

(a) Any company violating any provision of this subchapter or any rule issued pursuant to it shall be subject to a penalty of not more than $100 per day for each day the violation continues unless a different penalty is specified

in this subchapter for the violation, in which case the specified penalty shall apply. Any penalty imposed shall be recovered in a civil action in the name of the District of Columbia.

(b) Any company wilfully violating this subchapter or any rule or regulation issued pursuant to this subchapter shall be subject to a penalty of not more than $1,000 a day for each day the violation continues unless a different penalty is specified in this subchapter for the violation, in which case the specified penalty shall apply.

* * * * *

(Nov. 23, 1985, D.C. Law 6-63, § 8b, as added Apr. 11, 1986, D.C. Law 6-107, § 2(h), 33 DCR 1168.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" throughout (a) and (b).

§ 26-809. Review of impact.

(a) Three years after November 23, 1985, the committee of the Council which has oversight of banking regulations shall convene a public hearing to receive testimony that will aid the committee in determining whether passage of this subchapter:

* * * * *

(b) The committee shall use the information acquired at the hearing required by subsection (a) of this section to determine whether the District should continue to participate in the regional reciprocal interstate banking arrangement provided for in this subchapter and if so, for what period and to what extent. The committee may also determine whether a limit should be imposed on the number of banks or on the percentage of District deposits controlled by a single company; whether specific capitalization, employment, and location requirements should be imposed on out-of-state bank holding companies wishing to acquire District banks or bank holding companies; and whether specific plans detailing how the acquiror and acquiree intend to serve deposit and credit needs of District residents should be required. As soon as practicable after conclusion of the hearing, but no later than 6 months after the hearing, the committee shall file with the Office of the Secretary a recommendation or recommendations for Council action to alter the provisions of this subchapter, if necessary. (Nov. 23, 1985, D.C. Law 6-63, § 10, 32 DCR 5954.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in the introductory language of (a) and in (b).

§ 26-811. Administrative procedure; cease and desist orders.

* * * * *

(e) If, in the opinion of the Superintendent, a violation or practice or threatened violation or practice of this subchapter or § 26-103 is likely to cause insolvency, substantial dissipation of the assets or earnings of the bank or person, or serious prejudice to the interests of the depositors or customers of the bank or person, the Superintendent, through the Office of the Corporation Counsel, may:

* * * * *

(Nov. 23, 1985, D.C. Law 6-63, § 10c, as added Aug. 17, 1991, D.C. Law 9-42, § 2(d), 38 DCR 4981.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in the introductory language of (e).

§ 26-812. Hearings.

Any administrative hearing held in accordance with this subchapter shall be held pursuant to Chapter 15 of Title 1, unless the Superintendent determines that a public proceeding would jeopardize or adversely affect the safety and soundness of the bank or the public interest. If the Superintendent makes the determination, the hearing may be held in private session. (Nov. 23, 1985, D.C. Law 6-63, § 10d, as added Aug. 17, 1991, D.C. Law 9-42, § 2(d), 38 DCR 4981.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in this section.

§ 26-813. Enforcement.

Any order issued pursuant to this subchapter may be enforced in the Superior Court of the District of Columbia. (Nov. 23, 1985, D.C. Law 6-63, § 10e, as added Aug. 17, 1991, D.C. Law 9-42, § 2(d), 38 DCR 4981.)

Editor's notes. — Because of the codification of D.C. Law 11-142 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I of this chapter, "subchapter" has been substituted for "chapter" in this section.

Subchapter II. Interstate Banking and Branching.

§ 26-851. Findings.

The Council of the District of Columbia hereby finds and declares that:

(1) On September 29, 1994, the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("federal legislation") became law.

(2) Sections 102 and 103 of the federal legislation permit states to enact early opt in legislation to enable a state to appropriately regulate interstate

banking, branching, and bank mergers and acquisitions prior to June 1997 when all provisions of the federal legislation will become fully effective.

(3) It is the intent of the District of Columbia to exercise its statutory option under the federal legislation by opting in to its interstate branching schemata thus permitting the District's Office of Banking and Financial Institutions to regulate, pursuant to the federal legislation, interstate branching, acquisition of branches, bank mergers, and consolidations of existing banking entities within the District of Columbia among other things. (June 13, 1996, D.C. Law 11-142, § 2, 43 DCR 2159.)

Legislative history of Law 11-142. — Law 11-142, the "Banking and Branching Act of 1996," was introduced in Council and assigned Bill No. 11-321, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on March 5, 1996, and April 2, 1996, respectively. Signed by the Mayor on April 16, 1996, it was assigned Act No. 11-258 and transmitted to both Houses of Congress for its review. D. C. Law 11-142 became effective on June 13, 1996.

§ 26-852. Definitions.

For the purposes of this subchapter, the term:

(1) "Acquire" means:

(A) To merge or consolidate;

(B) To have direct or indirect ownership or control of voting shares, if, after the acquisition, the acquiror directly or indirectly owns or controls more than 5% of any class of voting shares of the acquired; or

(C) Any action that would result in direct or indirect control of the acquired, including a direct or indirect ownership of all or of substantially all of the assets of the acquired.

(2) "Acquisition of a branch" means the acquisition of a branch located in a host state without acquiring the bank of such branch.

(3) "Bank" means any insured bank as defined in 12 U.S.C. § 1813(h), or any institution eligible to become an insured bank as defined therein, which accepts demand deposits and makes commercial loans.

(4) "Branch" means any branch bank or branch bank office or other bank facility where deposits are received, checks are paid, or money is lent.

(5) "De novo branch" means a branch of a bank located in a host state which:

(A) Is originally established by a bank as a branch; and

(B) Does not become a branch of a bank as the result of the acquisition of another bank or the acquisition of a branch of another bank.

(6) "Depository institution affiliate" means any depository institution that controls, is controlled by, or is under common control of or with another depository institution.

(7) "District" means the District of Columbia.

(8) "District bank" means a bank whose home state is the District of Columbia and whose primary regulator is the District's Superintendent of Banking and Financial Institutions or the Comptroller of the Currency.

(9) "District state bank" means a bank whose home state is the District and that is chartered under the laws of the District.

(10) "Home state" means:

(A) The state of the main office for a national bank; or

(B) The state of chartering for a state bank.

(11) "Host state" means a state, other than the home state of a bank, in which a bank maintains or seeks to maintain a branch.

(12) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states pursuant to the authority of this subchapter, and the conversion of branches of any bank involved in such a merger or consolidation to branches of the resulting bank; or

(B) The purchase of all, or substantially all, of the assets of a bank whose home state is not the home state of the acquiring bank pursuant to the authority of this subchapter.

(13) "Out-of-state bank" means a bank whose home state is not the District.

(14) "Out-of-state national bank" means a nationally-chartered bank whose home state is not the District of Columbia.

(15) "Out-of-state state bank" means a state chartered bank whose home state is not the District of Columbia.

(16) "Resulting bank" means a bank that has resulted from an interstate merger transaction.

(17) "State" means any state of the United States, the District of Columbia, or any territory of the United States, or any legally incorporated jurisdiction deemed to be a state by the District's Superintendent of Banking and Financial Institutions.

(18) "Superintendent" means the District's Superintendent of Banking and Financial Institutions. (June 13, 1996, D.C. Law 11-142, § 3, 43 DCR 2159.)

Legislative history of Law 11-142. — See note to § 26-851.

§ 26-853. De novo branching or acquisition of a branch into a state other than the District.

(a) With the approval of the Superintendent, a District state bank may establish and maintain a de novo branch or acquire a branch in a state other than the District.

(b) A District state bank ("applicant") desiring to branch into a state other than the District under this section shall file an application on a form provided by the Superintendent and pay a branching fee of $500 to the Superintendent. If, within 30 days after receipt of the application, the Superintendent determines that the applicant possesses sufficient resources to branch into a state other than the District, the Superintendent shall approve the application.

(c) In reviewing the application, the Superintendent shall consider the views of the state bank supervisor of the host state where the branch is proposed to be located.

(d) If the Superintendent fails to approve or disapprove an application within 30 days of receipt, the application shall be deemed approved. The Superintendent may extend this 30-day review period for an additional 30 days upon a showing of good cause.

(e) A District state bank that branches into a state other than the District may exercise, at that branch, all rights and powers permitted to banks chartered by that state unless the Superintendent determines that the exercise of such rights or powers would threaten the safety and soundness of the District bank. (June 13, 1996, D.C. Law 11-142, § 4, 43 DCR 2159.)

Section references. — This section is referred to in § 26-802.4.

Temporary amendment of section. — Section 2(a) of D.C. Law 11-257 amended (a) to read as follows.

"(a) No person shall engage in business as a mortgage lender or mortgage broker, or both, or hold himself or herself out to the public to be a mortgage lender or mortgage broker for 150 days after the effective date of this chapter, unless such person has first obtained a license under this chapter."

Section 4(b) of D.C. Law 11-257 provides that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 11-142. — See note to § 26-851.

Legislative history of Law 11-257. — Law 11-257, the "Mortgage Lender and Broker Act of 1996 Time Extension Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-922, which was retained by Council. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. It was assigned Act No. 11-507 and transmitted to both Houses of Congress for its review. D.C. Law 11-257 became effective on April 9, 1997.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(3) of D.C. Law 12-60 provided that all fees received pursuant to § 26-853(b) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

§ 26-854. Interstate branching by de novo entry or acquisition into the District.

(a) An out-of-state bank ("applicant") that does not maintain a branch within the District may establish and maintain a de novo branch or may acquire a branch within the District provided the applicant meets the following requirements:

(1) Submits to the Superintendent a copy of the application it files with its home state supervisor or with the appropriate federal agency in order to establish such branch within the District;

(2) Pays a branching fee to be determined by the Superintendent; and

(3)(A) In the case of a de novo branch to be established prior to June 1, 1997, the laws of the home state of the applicant permit District banks to establish and maintain de novo branches in that state under terms similar to those set forth in this subchapter; or

(B) In the case of a branch to be established through acquisition of a branch prior to June 1, 1997, the laws of the home state of the applicant permit District banks to establish and maintain branches in that state through the acquisition of branches under terms similar to those set forth in this subchapter.

(b) An out-of-state state bank that establishes and maintains a branch in the District may exercise, at such branch, all rights and powers permitted to be exercised by District state banks unless the out-of-state state bank's home state determines that the exercise of such rights or powers would threaten the safety and soundness of the out-of-state state bank. (June 13, 1996, D.C. Law 11-142, § 5, 43 DCR 2159.)

Temporary amendment of section. — Section 2(b) of D.C. Law 11-247 amends (b) to read as follows:

"(b) The Superintendent shall approve or deny each application for a license within 60 days after the date from when the application

and bond are filed and the fees are paid. The Superintendent may issue a provisional license to an applicant who has filed the application and bond and paid all required fees if the Superintendent determines that he is unable to complete the application review process within 60 days."

Section 4(b) of D.C. Law 11-247 provides that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 11-142. — See note to § 26-851.

Legislative history of Law 11-247. — See note to § 26-853.

§ 26-855. Additional authority of Superintendent regarding establishment and maintenance of branches.

(a) The Superintendent may conduct examinations of any branch of an out-of-state state bank established or maintained within the District pursuant to § 26-854 to ensure that such branch is operating in a safe and sound manner and to ensure that such branch is in compliance with the laws of the District.

(b) The Superintendent may require periodic reports from any out-of-state bank that establishes or maintains a branch in the District pursuant to § 26-854, including reports regarding any agency agreements entered into between a branch and a depository institution affiliate as authorized and established by § 26-859, provided that the reports:

(1) Are similar to reports required from District banks by the Superintendent; and

(2) Are not preempted by federal law.

(c) The Superintendent may enter into cooperative agreements with any other state bank regulators for any legal purpose, including agreements for sharing of examination fees and other regulatory fees, in order to prevent duplication of regulatory functions and for the convenience and needs of the public.

(d) An out-of-state bank that has established and maintained a branch in the District may establish and maintain additional branches in the District to the same extent as a District state bank or to the extent otherwise permitted by federal law. (June 13, 1996, D.C. Law 11-142, § 6, 43 DCR 2159.)

Legislative history of Law 11-142. — See note to § 26-851.

§ 26-856. Interstate merger transactions by a District state bank.

(a) With the permission of the Superintendent, a District state bank may maintain and operate a branch in a state other than the District pursuant to an interstate merger transaction with an out-of-state bank in which the District state bank is the resulting bank.

(b) A District state bank ("applicant") desiring to establish and maintain a branch in another state under this section shall file an application on a form provided by the Superintendent and pay a merger fee to be determined by the Superintendent. If, within 30 days of receipt of the application, the Superintendent determines that the applicant possesses sufficient financial resources, sufficient managerial and professional experience, and that the proposed merger is in the public interest, the Superintendent shall approve the

application for an interstate merger transaction and for the operation of branches in a state other than the District by the District state bank.

(c) In reviewing the application, the Superintendent shall consider the views of the state bank supervisor of the host state where the interstate merger transaction is to be consummated.

(d) If the Superintendent fails to approve or disapprove an application within 30 days of receipt, the application shall be deemed approved. The Superintendent may extend this 30-day review period for an additional 30 days upon a showing of good cause.

(e) A District state bank that establishes and maintains a branch in a state other than the District pursuant to an interstate merger transaction may exercise, at such branch, all rights and powers permitted to banks chartered by that state unless the Superintendent determines that the exercise of such rights or powers would threaten the safety and soundness of the District state bank. (June 13, 1996, D.C. Law 11-142, § 7, 43 DCR 2159.)

Section references. — This section is referred to in § 26-802.4.

Legislative history of Law 11-142. — See note to § 26-851.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(3) of D.C. Law 12-60 provided that all fees received pursuant to § 26-856(b) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

§ 26-857. Interstate merger transactions by an out-of-state bank with a District bank; retention of branches by resulting bank.

(a) A District bank may engage with an out-of-state bank ("applicant") in an interstate merger transaction where the resulting bank is not a District state bank. The resulting bank from such an interstate merger transaction may maintain and operate the branches in the District of the merged District bank, provided the applicant meets the following requirements:

(1) Submits to the Superintendent a copy of the application it files with its home state regulator or with the federal banking agency in order to consummate such merger within the District;

(2) Pays a merger fee to be determined by the Superintendent. This fee may be waived by the Superintendent if the Superintendent determines that the fee paid by the applicant in its home state is sufficient;

(3) Prior to consummation of such merger, obtains a certificate of authority to transact business in the District in accordance with § 29-399. The applicant shall be entitled to do so notwithstanding the exclusion of the business of banking under the terms of § 29-399(a); and

(4) In the case of an interstate merger transaction to be consummated prior to June 1, 1997, the laws of the home state of the applicant permit District banks to consummate interstate merger transactions in the home state under terms similar to those set forth in this subchapter.

(b) An out-of-state state bank that engages in an interstate merger transaction with a District bank and is the resulting bank may exercise at its branches in the District all rights and powers to be exercised by District state banks, unless the out-of-state state bank's home state determines that the exercise of such rights or powers would threaten the safety and soundness of

the out-of-state state bank. (June 13, 1996, D.C. Law 11-142, § 8, 43 DCR 2159.)

Section references. — This section is referred to in § 26-802.4.

Legislative history of Law 11-142. — See note to § 26-851.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(3) of D.C. Law 12-60 provided that all fees received pursuant to § 26-857(a)(2) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

§ 26-858. Additional authority of Superintendent regarding interstate merger transactions.

(a) The Superintendent may conduct examinations of any branch of an out-of-state state bank established within the District pursuant to an interstate merger transaction to ensure that such branch is operating in a safe and sound manner and to ensure that such branch is in compliance with the laws of the District.

(b) The Superintendent may require periodic reports from any branch of an out-of-state bank established within the District pursuant to an interstate merger transaction, (including reports regarding any agency agreements entered into between a branch and a depository institution affiliate authorized and established pursuant to § 26-859, provided that the reports:

(1) Are similar to reports required from District banks by the Superintendent; and

(2) Are not preempted by federal law.

(c) The Superintendent may enter into cooperative agreements with any other state bank regulators for any legal purpose, including agreements for sharing of examination fees and other regulatory fees, in order to prevent duplication of regulatory functions and for the convenience and needs of the public.

(d) An out-of-state bank that has acquired a branch in the District pursuant to an interstate merger transaction may establish and maintain additional branches in the District to the same extent as a District state bank or to the extent otherwise permitted by federal law. (June 13, 1996, D.C. Law 11-142, § 9, 43 DCR 2159.)

Legislative history of Law 11-142. — See note to § 26-851.

§ 26-859. Establishment of agency agreements between affiliated depository institutions.

A District state bank that is a subsidiary of a bank holding company may agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform such other services as the Superintendent may determine are appropriate, as an agent for a depository institution affiliate. (June 13, 1996, D.C. Law 11-142, § 10, 43 DCR 2159.)

Section references. — This section is referred to in §§ 26-856 and 26-858.

Legislative history of Law 11-142. — See note to § 26-851.

§ 26-860. Enforcement.

If the Superintendent determines that any law of the District has been violated in the operation of a branch in the District of an out-of-state state bank, or that such branch is being operated in an unsafe or unsound manner pursuant to this subchapter, the Superintendent shall have the authority to undertake such enforcement actions as it would be permitted to take if the branch were a District state bank. (June 13, 1996, D.C. Law 11-142, § 11, 43 DCR 2159.)

Legislative history of Law 11-142. — See note to § 26-851.

§ 26-861. Rules.

(a) The Superintendent, pursuant to subchapter I of Chapter 15 of Title 1, shall issue rules to implement the provisions of this subchapter.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (June 13, 1996, D.C. Law 11-142, § 12, 43 DCR 2159.)

Legislative history of Law 11-142. — See note to § 26-851.

CHAPTER 9. SAVINGS AND LOAN ACQUISITION.

Sec.
26-905. Authorization of nonregional acquisitions.

§ 26-905. Authorization of nonregional acquisitions.

* * * * *

(g)

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(4) If, after the hearing and final order issued upon the completion of all appeals, the Superintendent concludes that the association or savings and loan holding company has not complied with the order issued by the Superintendent pursuant to paragraph (2) of this subsection within the specified period of time, including any extension, the Superintendent shall either:

(A) Order the association or savings and loan holding company to divest itself of control of all District associations and all District branches of any other subsidiary association within a reasonable period of time. If the Superintendent orders divestiture pursuant to this paragraph, the divestiture shall be completed within one year after the date on which the Superintendent's order became final; or

(B) Fine the association or savings and loan holding company not more than $1,000 a day and present the decision, final order, and letter of credit or other financial assurance required in subsection (d) of this section to the insurer and call upon the issuer to honor the letter of credit or other financial assurance for payment equal to the amount of the fine assessed pursuant to this paragraph.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 25, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (g)(4).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

CHAPTER 10. MORTGAGE LENDERS AND BROKERS.

§ 26-1001. Definitions.

For the purposes of this chapter, the term:

(1) "Borrower" means a person who submits an application for a loan secured by a first or subordinate mortgage or deed of trust on a single to 4-family home to be occupied by the borrower as the borrower's primary residence.

(2) "Commitment" means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of the loan being extended to the borrower.

(3) "District" means the District of Columbia.

(4) "Federally approved seller-servicers" means a mortgage lender that has been approved as a seller-servicer by:

(A) The Federal Home Loan Mortgage Corporation;

(B) The Federal National Mortgage Association; or

(C) The Government National Mortgage Association.

(5) "Financing agreement" means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan that:

(A) Results in or is secured by a first or subordinate mortgage or deed of trust on a single to 4-family home to be occupied by the borrower; and

(B) Is offered or extended to the borrower.

(6) "Interest in real property" includes:

(A) A confessed judgment note or consent judgment required or obtained by any person acting as a mortgage lender or mortgage broker for the purpose of acquiring a lien on residential real property;

(B) A sale and leaseback required or obtained by any person acting as a mortgage lender or mortgage broker for the purpose of creating a lien on residential real property;

(C) A mortgage, deed of trust, or lien other than a judgment lien, on residential real property; and

(D) Any other security interest that has the effect of creating a lien on residential real property in the District of Columbia.

(7) "License" means a license issued by the Superintendent under this chapter to authorize a person to engage in business as a mortgage lender or mortgage broker.

(8) "Licensee" means a person who is licensed as a mortgage lender or mortgage broker under this chapter.

(9) "Loan application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a mortgage loan. The subsequent addition of an identified property to the submission converts the submission to an application for a mortgage loan.

(10) "Mortgage broker" means any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly accepts or offers to accept an application for a mortgage loan, solicits or offers to solicit a mortgage loan on behalf of a borrower, or negotiates or offers to negotiate the terms and conditions of a mortgage loan on behalf of a lender.

(11) "Mortgage lender" means:

(A) Any person who:

(i) Repealed.

(ii) Makes a mortgage loan to any person; or

(iii) Engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person.

(B) A mortgage lender does not include:

(i) A financial institution that accepts deposits and is regulated under Title 26 of the District of Columbia Code;

(ii) The Federal Home Loan Mortgage Corporation;

(iii) The Federal National Mortgage Association;

(iv) The Government National Mortgage Association; or

(v) Any person engaged exclusively in the acquisition of all or any portion of a mortgage loan under any federal, state, or local governmental program of mortgage loan purchases.

(12) "Mortgage loan" means any loan or other extension of credit that is secured, in whole or in part, by any interest in residential real property in the District of Columbia.

(13) "Nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers. Nothing in this chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution of final liquidation.

(14) "Person" means an individual, firm, corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity, or group of individuals however organized.

(15) "Principal" means any person who, directly or indirectly, owns or controls 10% or more of the outstanding stock of a stock corporation or 10% or greater interest in a nonstock corporation or a limited liability company.

(16) "Residential real property" means any owner-occupied real property located in the District of Columbia, which property has a dwelling on it designed principally as a residence with accommodations for not more than 4 families. This term does not include any real property held primarily for rental, investment, or the generation of income through any commercial or industrial enterprise.

(17) "Superintendent" means the Superintendent of the District of Columbia Office of Banking and Financial Institutions.

(18) "Washington, D.C. metropolitan region" means the District of Columbia, the counties of Montgomery and Prince Georges in the State of Maryland, the counties of Arlington and Fairfax, and the cities of Alexandria and Falls Church in the Commonwealth of Virginia. (Sept. 9, 1996, D.C. Law 11-155, § 2, 43 DCR 4213; June 6, 1998, D.C. Law 12-116, § 2(a), 45 DCR 1959.)

Effect of amendments. — D.C. Law 12-116 rewrote (9); and repealed (11)(A)(i).

Temporary amendments of section. — Section 2(a) of D.C. Law 12-3 rewrote (9); and repealed (11)(A)(i).

Section 6(b) of D.C. Law 12-3 provides that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 12-101 rewrote (9); and repealed (11)(A)(i).

Section 6(b) of D.C. Law 12-101 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Mortgage Lender and Broker Act of 1996 Emergency Amendment Act of 1997 (D.C. Act 12-23, March 3, 1997, 44 DCR 1773), § 2(a) of the Mortgage Lender and Broker Act of 1996 Second Emergency Amendment Act of 1997 (D.C. Act 12-245, January 13, 1998, 45 DCR 656), and § 2(a) of the Mortgage Lender and Broker Act of 1996 Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-308, March 20, 1998, 45 DCR 1920).

Section 6 of D.C. Act 12-245 provided for the application of the act.

Section 6 of D.C. Act 12-308 provided for the application of the act.

Legislative history of Law 11-155. — Law 11-155, the "Mortgage Lender and Broker Act of 1996," was introduced in Council and assigned Bill No. 11-637, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-309 and transmitted to both Houses of Congress for its review. D.C. Law 11-155 became effective on September 9, 1996.

Legislative history of Law 12-3. — Law 12-3, the "Mortgage Lender and Broker Act of 1996 Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-82. The Bill was adopted on first and second readings on February 4, 1997, and March 4, 1997, respectively. Signed by the Mayor on March 19, 1997, it was assigned Act No. 12-45 and transmitted to both Houses of Congress for its review. D.C. Law 12-3 became effective on May 23, 1997.

Legislative history of Law 12-101. — Law 12-101, the "Mortgage Lender and Broker Act

of 1996 Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-475. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 27, 1998, it was assigned Act No. 12-277 and transmitted to both Houses of Congress for its review. D.C. Law 12-101 became effective on April 30, 1998.

Legislative history of Law 12-116. — Law 12-116, the "Mortgage Lender and Broker Act of 1996 Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-426, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on February 3, 1998, and March 3, 1998, respectively. Signed by the Mayor on March 17, 1998, it was assigned Act No. 12-313 and transmitted to both Houses of Congress for its review. D.C. Law 12-116 became effective on June 6, 1998.

§ 26-1002. Exemptions.

The provisions of this chapter shall not apply to:

(1) Any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of the United States, any state or territory of the United States, or the District, and any other financial institution incorporated or chartered under the laws of the District or of the United States, that accepts deposits and is regulated under Title 26 of the District of Columbia Code, and subsidiaries and affiliates of such entities which maintain their principal office or a branch office in the District of Columbia and in which the lender, subsidiary, or affiliate is subject to the general supervision or regulation of, or subject to audit or examination by, a regulatory body or agency of the United States, any state or territory of the United States, or the District;

(2) Any insurance company authorized to do business in the District;

(3) Any corporate instrumentality of the United States government including:

(A) The Federal Home Loan Mortgage Corporation;

(B) The Federal National Mortgage Association; and

(C) The Government National Mortgage Association;

(4) Any person who makes or brokers 3 or fewer mortgage loans per calendar year;

(5) Any person who takes back a deferred purchase money mortgage in connection with the sale of:

(A) Residential real property owned by, and titled in the name of, that person; or

(B) A new residential dwelling that the person built.

(6) A person making a mortgage loan to a borrower who is the person's spouse, child, child's spouse, parent, sibling, grandparent, grandchild, or grandchild's spouse;

(7) Nonprofit corporations making mortgage loans to promote home ownership or improvements for very low, lower, and moderate income households as defined in Chapter 25 of Title 14 of the District of Columbia Municipal Regulations;

(8) Agencies of the federal government, the District, or any state or municipal government, or any quasi-governmental agency making mortgage loans under the specific authority of the laws or regulations of any state, the District, or the United States, including, without limitation, the Housing Finance Agency of the District of Columbia with respect to its activities in offering, accepting, completing, and processing mortgage loan applications under its programs;

(9) Persons acting as fiduciaries with respect to any employee pension benefit plan qualified under the Internal Revenue Code who make mortgage loans solely to plan participants from plan assets;

(10) Persons licensed by the District of Columbia as attorneys, real estate brokers, or real estate salespersons, not actively and principally engaged in negotiating, placing, or finding mortgage loans, when rendering services as an attorney, real estate broker, or real estate salesperson; however, a real estate broker or a real estate salesperson who receives any fee, commission, kickback, rebate, or other payment for directly or indirectly negotiating, placing, or finding a mortgage loan for others shall not be exempt from the provisions of this chapter; and

(11) Persons acting in a fiduciary capacity conferred by authority of any court. (Sept. 9, 1996, D.C. Law 11-155, § 3, 43 DCR 4213; June 6, 1998, D.C. Law 12-116, § 2(b), 45 DCR 1959.)

Section references. — This section is referred to in §§ 26-710 and 45-1931.

Effect of amendments. — D.C. Law 12-116 rewrote (1).

Legislative history of Law 11-155. — See note to § 26-1001.

Legislative history of Law 12-116. — See note to § 26-1001.

References in text. — The Internal Revenue Code, referred to in (9), is codified as Title 26 of the U.S. Code.

§ 26-1003. License requirements.

(a) No person shall engage in business as a mortgage lender or mortgage broker, or both, or hold himself out to the public to be a mortgage lender or mortgage broker for 60 days after September 9, 1996, unless such person has first obtained a license under this chapter.

(b) To qualify for a license, an applicant shall satisfy the Superintendent that the applicant, including its members, officers, directors, and principals is of good moral character and has sufficient financial responsibility, business experience, and general fitness to:

(1) Engage in business as a mortgage lender or mortgage broker;

(2) Warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and

(3) In the case of an applicant for a license to act as a mortgage lender, capitalize the business by maintaining at least $200,000 of funds available, and in the case of an applicant for a license to act as a mortgage broker, capitalize the business by maintaining at least $10,000 of funds available.

(c) The Superintendent may deny an application for a license to any person who has committed any act prior to the granting of the license that would be a ground for suspension or revocation of a license under this chapter.

(d) To apply for a license an applicant shall:

(1) Complete, sign, and submit to the Superintendent an application made under oath on the form that the Superintendent requires; and

(2) Comply with all conditions and provisions of the application for licensure.

(e) The application shall include:

(1) If the applicant is an individual, the applicant's name, business address, and telephone number, and residential address and telephone number;

(2) If the applicant is a partnership, limited liability company, or other noncorporate business association, the business name, business address, and telephone number, and the residential address and telephone number of each:

(A) General partner, if the applicant is a limited partnership;

(B) General partner who holds an interest in the partnership of more than 10%, if the applicant is a general partnership; or

(C) Member, if the applicant is a limited liability company or a noncorporate business association;

(3) If the applicant is a corporation:

(A) The name, address, and telephone number of the corporate entity; and

(B) The name, business telephone number, and residential address and telephone number of the president, senior vice presidents, secretary, and treasurer, each director and each stockholder owning or controlling 10% or more of any class of stock in the corporation;

(4) The name under which the mortgage lender or mortgage broker business is to be conducted;

(5) The name and address of the applicant's registered agent, if any;

(6) The address of the location of the business to be licensed;

(7) Whether the applicant seeks a license to act as a mortgage lender, mortgage broker, or both; and

(8) Such other information concerning the financial responsibility, background, experience, and activities of the applicant and its members, officers, directors, and principals as the Superintendent may require.

(f) With each application, the applicant shall pay to the Superintendent:

(1) A nonrefundable investigation fee of $100;

(2) A nonrefundable application fee of $500; and

(3) A license fee of $500.

(g) The Superintendent may, from time to time, increase or decrease the fees set forth in this section. The fees shall be fixed at such rates, and computed on such bases and in such manner as may, in the judgement of the Superintendent, be necessary to defray the approximate costs of carrying out the regulatory functions set forth in this chapter. These fees shall not be abated by surrender, suspension, or revocation of a license.

(h) For each license for which an applicant applies, the applicant shall:

(1) Submit a separate application;

(2) Pay a separate license fee; and

(3) File a separate surety bond or other financial guaranty under subsection (i) of this section.

(i) An applicant for an original license or for the renewal of a license shall file a surety bond with each original application and any renewal application for the license.

(1) The surety bond shall:

(A) Run to the Superintendent for the benefit of any person who has been damaged by a licensee as a result of violating any law or regulation governing the activities of mortgage lenders or mortgage brokers;

(B) Be issued by a surety company authorized to do business in the District;

(C) Be conditioned upon the applicant complying with all District laws regulating the activities of mortgage lenders, mortgage brokers, and mortgage

loan lending and performing all written agreements with borrowers or prospective borrowers, accounting for all funds received by the licensee in conformity with a standard system of accounting consistently applied; and

(D) Be continuously maintained thereafter for as long as any license issued under this chapter remains in force.

(2) If an applicant has not conducted business in the District in any of the 3 calendar years preceding the year in which an original application for a license is filed, the surety bond required under this subsection shall be in the amount of $12,500.

(3) If an applicant has conducted business as a mortgage lender or mortgage broker in the District in any of the 3 calendar years preceding the year in which an original or renewal application is filed, the applicant shall provide a sworn statement setting forth the total dollar amount of mortgage loans applied for and accepted or mortgage loans applied for, procured, and accepted by the mortgage lender or mortgage broker during the latest calendar year such business was conducted. The bond required in this circumstance shall be determined as follows:

(A) Where the total dollar amount of stated loans was $1,000,000 or less, the bond shall be in the amount of $12,500;

(B) Where the total dollar amount of stated loans was more than $1,000,000 but not more than $2,000,000, the bond shall be in the amount of $17,500;

(C) Where the total dollar amount of stated loans was more than $2,000,000 but not more than $3,000,000, the bond shall be in the amount of $25,000; and

(D) Where the total dollar amount of stated loans was more than $3,000,000, the bond shall be in the amount of $50,000.

(4) Subject to approval by the Superintendent, if an applicant files 4 or more original or renewal applications at the same time, the applicant may provide a blanket surety bond for all licensed offices in the amount of $200,000.

(5) Any person who may be damaged by noncompliance of a licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

(j) Any license issued pursuant to this section shall be issued as a Class A Financial Services endorsement to a master business license under the master business license system as set forth in subchapter 1A of Chapter 28 of Title 47 of the District of Columbia Code. (Sept. 9, 1996, D.C. Law 11-155, § 4, 43 DCR 4213; June 6, 1998, D.C. Law 12-116, § 2(c), 45 DCR 1960; Apr. 20, 1999, D.C. Law 12-261, § 2003(s), 46 DCR 3142.)

Section references. — This section is referred to in §§ 26-802.4, 26-1004, 26-1006, and 26-1007.

Effect of amendments. — D.C. Law 12-116, in (b)(3), substituted "maintaining" for "having" twice.

D.C. Law 12-261 added (j).

Temporary amendment of section. — Section 2(b) of D.C. Law 12-3, in (b)(3), substituted "maintaining" for "having" twice.

Section 6(b) of D.C. Law 12-3 provides that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 12-101, in (b)(3), substituted "maintaining" for "having" twice.

Section 6(b) of D.C. Law 12-101 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Mortgage Lender and Broker Act of 1996 Time Extension Emergency Act of 1996 (D.C. Act

11-439, December 4, 1996, 44 DCR 6656), and § 2(a) of the Mortgage Lender and Broker Act of 1996 Time Extension Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-21, March 3, 1997, 44 DCR 1768).

Section 4 of D.C. Act 11-439 provides for the application of the act.

Section 4 of D.C. Act 12-21 provides for the application of the act.

For temporary amendment of section, see § 2(b) of the Mortgage Lender and Broker Act of 1996 Emergency Amendment Act of 1997 (D.C. Act 12-23, March 3, 1997, 44 DCR 1773), § 2(b) of the Mortgage Lender and Broker Act of 1996 Second Emergency Amendment Act of 1997 (D.C. Act 12-245, January 13, 1998, 45 DCR 656), and § 2(b) of the Mortgage Lender and Broker Act of 1996 Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-308, March 20, 1998, 45 DCR 1920).

Section 6 of D.C. Act 12-245 provides for application of the act.

Section 6 of D.C. Act 12-308 provides for application of the act.

Legislative history of Law 11-155. — See note to § 26-1001.

Legislative history of Law 12-3. — See note to § 26-1001.

Legislative history of Law 12-101. — See note to § 26-1001.

Legislative history of Law 12-116. — See note to § 26-1001.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(4) of D.C. Law 12-60 provided that all fees received pursuant to § 26-1003(f) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

§ 26-1004. Issuance of license.

(a) When an applicant for a license files the application and bond and pays the fees required by this chapter, the Superintendent shall investigate to determine if the applicant meets the requirements of this chapter. The Superintendent shall make such investigations as deemed necessary to determine if the applicant has complied with all applicable provisions of law and any regulations promulgated thereunder.

(b) The Superintendent shall approve or deny each application for a license within 60 days after the date from when the application and bond are filed and the fees are paid.

(c) The Superintendent shall issue a license to any applicant who meets the requirements of this chapter.

(d) Every license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any pre-existing legal right or obligation of such licensee.

(1) A license issued under this section authorizes the licensee to act as mortgage lender or mortgage broker under the license at the licensed place of business.

(2) Only one place of business may be maintained under any one license.

(3) A licensee may maintain more than one license under this section provided that a separate application for each license is made pursuant to § 26-1003 and the Superintendent approves such application.

(e)(1) The Superintendent shall include on each license:

(A) The name of the licensee; and

(B) The address at which the business is to be conducted.

(2) A person may not conduct any mortgage loan business at any location or under any name different from the address and name that appears on the person's license.

(f)(1) A licensee may not receive any application for a loan or allow any note or contract for a loan or mortgage, evidence of any note or contract for a loan or mortgage, or evidence of indebtedness to be signed or executed at any place for which the licensee does not have a license, except at the office of:

(A) The attorney for the borrower or for the licensee; or

(B) A title insurance company, a title company, or an attorney for a title insurance company or a title company.

(2) Notwithstanding paragraph (1)(A) of this subsection, a licensee may accept a loan application from a borrower by mail or telephone or in person at the borrower's residence or place of employment to accommodate the borrower at the borrower's request.

(3) The Superintendent shall adopt regulations to ensure that the loan application process is conducted fairly and in a manner consistent with the best interests of both the borrower and mortgage lender.

(g) A license may be issued under this chapter to a business entity whose principal office is located outside the District provided that the business entity maintains a resident agent within the District at all times during the term of the license, regardless of whether:

(1) The business entity maintains any office within the District; and

(2) The activities of the business entity constitute doing business or having a tax situs in the District.

(h) Each license shall be prominently posted in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name other than the name set forth on the license issued by the Superintendent. (Sept. 9, 1996, D.C. Law 11-155, § 5, 43 DCR 4213.)

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Mortgage Lender and Broker Act of 1996 Time Extension Emergency Act of 1996 (D.C. Act 11-439, December 4, 1996, 44 DCR 6656), and § 2(b) of the Mortgage Lender and Broker Act of 1996 Time Extension Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-21, March 3, 1997, 44 DCR 1768).

Section 4 of D.C. Act 11-439 provides for the application of the act.

Section 4 of D.C. Act 12-21 provided for the application of the act.

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1005. Acquisition of control; application.

(a) Except as provided in this section, no person shall acquire directly or indirectly 25% or more of the voting shares of a corporation or 25% of the ownership of any other entity licensed to conduct business under this chapter unless such person first:

(1) Files an application with the Superintendent in such form as the Superintendent may prescribe from time to time;

(2) Delivers such other information to the Superintendent as the Superintendent may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, officers, principals, and members, and of any proposed new directors, officers, principals, or members of the licensee; and

(3) Pays such application fee as the Superintendent may prescribe.

(b) Upon the filing and investigation of an application, the Superintendent shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, officers, and principals and any proposed new directors, members, officers, and principals have the financial responsibility, character, reputation, experience and general fitness to warrant the belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the law. The Superintendent shall grant or deny the application within 60 days after the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Superintendent reciting the reasons for the extension. If the application is denied, the Superintendent shall notify the applicant of the denial and the reasons for the denial.

(c) The provisions of this section shall not apply to:

(1) The acquisition of an interest in a licensee directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed by this chapter or a person exempt from this chapter;

(2) The acquisition of an interest in a licensee directly or indirectly, including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee; or

(3) The acquisition of an interest in a licensee by a person by bequest, descent, survivorship, or operation of law.

(d) The person acquiring an interest in a licensee in a transaction which is exempt from filing an application pursuant to subsection (c) of this section shall send written notice to the Superintendent of such acquisition within 10 days after the closing of such acquisition. (Sept. 9, 1996, D.C. Law 11-155, § 6, 43 DCR 4213.)

Section references. — This section is referred to in § 26-802.4.

Legislative history of Law 11-155. — See note to § 26-1001.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(4) of D.C. Law 12-60 provided that all fees received pursuant to § 26-1005(a)(3) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

§ 26-1006. Rejection of license application.

(a)(1) If an applicant does not meet the requirements of § 26-1003, the Superintendent shall:

(A) Immediately notify the applicant in writing of this fact;

(B) Return the bond filed under § 26-1003; and

(C) Refund the license fee.

(2) The Superintendent shall, subject to the appropriations process, keep the investigation fee and application fee.

(b) Within 30 days after the Superintendent denies an application, the Superintendent shall:

(1) Issue a written decision containing the reasons upon which the denial was based;

(2) Send a copy of the decision to the applicant; and

(3) Advise the applicant of a right to a hearing which shall be held in accordance with subchapter I of Chapter 15 of Title 1.

(c)(1) An applicant who seeks a hearing on a license application denial shall file a written request for a hearing within 45 days following receipt of the written decision for denial.

(2) A hearing date established in response to the filing of a notice under this subsection may be postponed only once for a period of up to 30 days after the initial hearing date. (Sept. 9, 1996, D.C. Law 11-155, § 7, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1007. License expiration and renewal; annual fee.

(a) A license expires on the December 31 after its effective date unless the license is renewed for a 1-year term as provided in this section.

(b) Before a license expires, the licensee periodically may renew the license for additional 1-year terms, if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Submits to the Superintendent a renewal application on the form that the Superintendent requires; and

(3) Files a bond or bond continuation certificate for the amount required under § 26-1003.

(c) If a license is issued for less than a full year, is surrendered voluntarily, is suspended, or is revoked, the Superintendent may not refund any part of the license fee regardless of the time remaining in the license year.

(d) In order to defray the costs of their examination, supervision, and regulation, every mortgage lender required to be licensed under this chapter shall pay an annual renewal fee calculated in accordance with a schedule set by regulation promulgated by the Superintendent. The schedule shall bear a reasonable relationship to the total assets of such individual mortgage lenders and to other factors relating to their supervision and regulation. Every mortgage broker required to be licensed under this chapter shall pay an annual renewal fee calculated in accordance with a schedule set by regulation promulgated by the Superintendent. All such fees shall be assessed on or before April 25, for that calendar year, and on or before April 25 for every calendar year thereafter. All such fees shall be paid by the licensed mortgage lenders and mortgage brokers to the Superintendent on or before May 25 of each calendar year or within 30 days of the receipt of each assessment. (Sept. 9, 1996, D.C. Law 11-155, § 8, 43 DCR 4213.)

Section references. — This section is referred to in § 26-802.4.

Legislative history of Law 11-155. — See note to § 26-1001.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund. — Section 1804(4) of D.C. Law 12-60 provided that all fees received pursuant to § 26-1007(d) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

§ 26-1008. Change of place of business.

(a) A licensee may not change the place of business for which a license is issued unless the licensee:

(1) Notifies the Superintendent in writing of the proposed change; and

(2) Receives the written consent of the Superintendent.

(b) The application for a change of place of business shall be approved unless the Superintendent finds that the applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with all applicable laws and regulations.

(c) Notwithstanding subsection (a)(2) of this section, if the Superintendent does not approve or disapprove of the proposed change of place of business within 30 days of the mailing of the notice required under subsection (a)(1) of this section, the proposed change of place of business shall be deemed approved.

(d) After approval, the applicant for a change of place of business shall give written notice to the Superintendent within 10 days after the commencement of business at the additional or relocated office.

(e) Every licensee shall notify the Superintendent, in writing of the closing of any office not less than 10 days before such closing, and of the name, address, and position of each new principal, officer, member, partner, or director not more than 10 days after such new principal, officer, member, partner, or director assumes such position. Every licensee shall also provide such other information with respect to any such changes as the Superintendent may reasonably require. (Sept. 9, 1996, D.C. Law 11-155, § 9, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1009. Record keeping requirements.

(a) Each licensee shall keep and make available to the Superintendent at the licensee's place of business any books and records that the Superintendent, by rule or regulation, requires to enable the Superintendent to enforce this chapter and any rule or regulation adopted under this chapter.

(b) Each mortgage lender required to be licensed under this chapter shall retain for at least 3 years after final payment is made on any mortgage loan or after the mortgage loan is sold, whichever first occurs, copies of the note, settlement statement, truth-in-lending disclosure, and such other papers or records relating to the loan as may be required by rule or regulation.

(c) On approval of the Superintendent, a licensee need not keep at the licensee's place of business any books and records otherwise required by the Superintendent under subsection (a) of this section if the licensee:

(1) Is a federally approved seller-servicer; or

(2)(A) Makes the books and records available to the Superintendent at the licensee's place of business within 5 business days of the Superintendent's official request; and

(B) Retains the records for at least 60 months in a storage facility disclosed to the Superintendent.

(d) Each mortgage broker required to be licensed under this chapter shall retain for at least 3 years after a mortgage loan is made the original contract for his or her compensation, a copy of the settlement statement, an account of fees received in connection with the loan, and such other papers or records as may be required by rule or regulation. (Sept. 9, 1996, D.C. Law 11-155, § 10, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1010. Annual report.

(a) Each mortgage lender or mortgage broker required to be licensed under this chapter shall annually, on or before March 31, file a written report with the Superintendent containing such information as the Superintendent may require concerning the licensee's operations during the preceding calendar year as to each licensed place of business. Reports shall be accompanied by a sworn affidavit and in the form prescribed by the Superintendent who shall make and publish annually an analysis and recapitulation of the reports.

(b) Annual reports shall include:

(1) The number and total dollar amount of mortgage loans which were originated or purchased by the licensee in the District during each fiscal year for which a valid license is maintained by the licensee; and

(2) The number and dollar amount of all loans where the applicant filed notices of intent to foreclose in the last year, including the borrower's:

(A) Address;

(B) Tract income level;

(C) Racial characteristics; and

(D) Census tract where the property is located.

(c) Any information relating to mortgage loans required to be maintained under subsection (b) of this section shall be itemized in order to disclose for each such item:

(1) The number and dollar amount of mortgage loans made to mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage; and

(2) The number and dollar amount of mortgage loans and completed application involving mortgagors or mortgage applicants grouped according to census tract, income level, racial characteristics and gender. (Sept. 9, 1996, D.C. Law 11-155, § 11, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1011. Surrender of license.

(a) A licensee may surrender a license by sending to the Superintendent the license and a written statement that the license is surrendered.

(b) The surrender of a license does not affect any civil or criminal liability of a licensee for acts committed before the license was surrendered. (Sept. 9, 1996, D.C. Law 11-155, § 12, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1012. Examinations and investigations.

(a) The Superintendent, or his or her designated agent, shall examine the affairs, business, premises, and records of each licensee at least once in every

3 year period and at any other time the Superintendent reasonably considers necessary.

(b)(1) Any person aggrieved by the conduct of a licensee under this subsection in connection with a mortgage loan may file a written complaint with the Superintendent who shall investigate the complaint.

(2) The Superintendent may make any other examination or investigation of any person if the Superintendent has reasonable cause to believe that the person has violated any provision of this chapter, any regulation adopted under this chapter, or any other law regulating mortgage loan lending in the District.

(c) In the course of any investigation or examination, the owners, member, officers, directors, partners, and any employees of such mortgage lender or mortgage broker being investigated or examined shall afford the Superintendent full access to all premises, books, and records. For the foregoing purposes, the Superintendent, or his or her designated agent, shall have authority to administer oaths, examine under oath all the aforementioned persons, compel the production of papers and objects of all kinds, subpoena documents or other evidence, and summons and examine under oath any person whose testimony the Superintendent requires.

(d)(1) If any person fails to comply with a subpoena or summons of the Superintendent under this chapter or to testify concerning any matter about which the person may be interrogated under this chapter, the Superintendent may file a petition for enforcement with the Civil Actions Branch of the Superior Court of the District of Columbia.

(2) On petition by the Superintendent, the court may order the person to attend and testify or produce evidence.

(e) When it becomes necessary to examine or investigate the books and records of a licensee required to be licensed under this chapter at a location outside the Washington, D.C. metropolitan region, the licensee shall be liable for, and shall pay to the Superintendent within 30 days, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay a reasonable per diem rate approved by the Superintendent. (Sept. 9, 1996, D.C. Law 11-155, § 13, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1013. Required loan disclosures.

(a)(1) A licensee who offers to make or procure a loan secured by a first or subordinate mortgage or deed of trust on a single to 4-family home to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender.

(2) The financing agreement shall provide:

(A) The term and principal amount of the loan;

(B) An explanation of the type of mortgage loan being offered;

(C) The rate of interest that will apply to the loan and, if the rate is subject to change, or is a variable rate, or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;

(D) The points and all fees, if any, to be paid by the borrower or the seller, or both; and

(E) The term during which the financing agreement remains in effect.

(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration, the financing agreement shall constitute a final binding agreement between the parties as to the items covered by the financing agreement.

(b)(1) The financing agreement executed by the lender shall be delivered to the borrower at least 72 hours before the time of settlement agreed to by the parties and shall include:

(A) The effective fixed interest rate or initial interest rate that will be applied to the loan; and

(B) A restatement of all the remaining unchanged provisions of the financing agreement.

(2) Prior to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.

(3) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender. (Sept. 9, 1996, D.C. Law 11-155, § 14, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1014. Prohibited practices.

(a) No mortgage lender or mortgage broker required to be licensed under this chapter shall:

(1) Obtain any agreement or instrument in which blanks are left to be filled in after execution;

(2) Take an interest in collateral other than the real estate or residential property, including fixtures and appliances thereon, securing a mortgage loan;

(3) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(4) Delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(5) Obtain any agreement or instrument executed by a borrower which contains an acceleration clause permitting the unpaid balance of a mortgage loan to be declared due for any reason other than failure to make timely payments of interest and principal or to perform other obligations undertaken in the agreement or instrument;

(6) Make, directly or indirectly, any mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, any of the following factors may be considered in determining whether a mortgage loan was made with the intent to foreclose on the borrower's property:

(A) Lack of the probability of full repayment of the loan by the borrower; and

(B) A significant proportion of similarly foreclosed loans by the lender;

(7) If acting as a mortgage lender, fail to require the person closing the mortgage loan to provide to the borrower prior to the closing of the mortgage loan:

(A) A settlement statement as required pursuant to the Real Estate Settlement Procedures Act, approved December 22, 1974 (88 Stat. 1724; 12 U.S.C. § 2601 *et seq.*), and any regulations promulgated thereunder; and

(B) Any disclosure which is required by the Truth in Lending Act, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. § 1601 *et seq.*), and Regulation Z (12 CFR Part 226); or

(8) Except for an application fee in an amount not to exceed 1% of the original principal amount of the mortgage loan applied for, and documented costs of credit reports and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender which written commitment shall be given not less than 72 hours prior to the closing of the mortgage loan, unless this time period is waived by the borrower.

(b) No mortgage broker required to be licensed under this chapter shall:

(1) Receive compensation from a mortgage lender of which he is a principal, partner, trustee, director, member, officer, or employee;

(2) Receive compensation from a borrower in connection with any mortgage loan transaction in which he is the lender or a principal, partner, trustee, director, member, officer, or employee of the mortgage lender; or

(3)(A) Receive compensation for negotiating, placing, or finding a mortgage loan where a mortgage broker, or any person affiliated with such mortgage broker, has otherwise acted as a real estate broker, agent, or salesperson in connection with the sale of the real estate which secures the mortgage loan and such mortgage broker or affiliated person has received or will receive any other compensation or thing of value from the lender, borrower, seller, or any other person, unless the borrower is given the following notice in writing at the time the mortgage broker's services are first offered to the borrower:

"DISCLOSURE OF DUAL CAPACITY WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU A FEE NOT TO EXCEED _____ % OF THE LOAN AMOUNT. THIS FEE IS IN ADDITION TO ANY OTHER FEE WE MAY RECEIVE IN CONNECTION WITH THE SALE OR PURCHASE OF THE REAL ESTATE THAT WILL SECURE THE LOAN. WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE. THE BORROWER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS DISCLOSURE OF DUAL CAPACITY AND HAVING RECEIVED A COPY HEREOF. _____ _____ BORROWER'S SIGNATURE DATE _____ _____ BROKER'S SIGNATURE DATE"

(B) The foregoing notice shall be at least 10-point type and the prospective borrower shall acknowledge receipt of the written notice.

(C) The phrase "person affiliated with such mortgage broker" means any person which is a subsidiary, stockholder, partner, trustee, director, member, officer, or employee of a mortgage broker, and any corporation, 10% or more of the capital stock of which is owned by a mortgage broker or by any person which is a subsidiary, stockholder, partner, trustee, director, member, officer, or employee of a mortgage broker.

(c) Notwithstanding the provisions of subsection (b) of this section, no person shall act as a mortgage broker in connection with any real estate sales transaction entered into prior to September 9, 1996, in which such person, or any person affiliated with such person, has acted as a real estate broker, agent, or salesperson and has received or will receive compensation in connection with such transaction, unless such person was regularly engaged in acting as a mortgage broker in connection with such transaction as of September 9, 1996. (Sept. 9, 1996, D.C. Law 11-155, § 15, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1015. Escrow accounts.

(a) All moneys required by a mortgage lender to be paid by borrowers in escrow to defray future taxes or insurance premiums, or for other lawful purposes, shall be kept in accounts segregated from accounts of the mortgage lender, and shall not be commingled with other funds of the mortgage lender.

(b) No licensed mortgage lender shall require any borrower who, on the date of execution of the loan or financial transaction, has made a down payment equaling 20% or more of the total purchase price of the property or who has an equity interest in the property equal to, or greater than, 20% of the fair market value of the property, to make advance payments of the real estate taxes or casualty insurance premiums to enable the mortgage lender to have funds on hand for disbursement for payment of such taxes or insurance premiums. Licensed mortgage lenders shall provide such borrowers with a separate statement, in writing, which clearly and conspicuously sets forth the right to pay such taxes and insurance premiums directly. Nothing contained in this subsection shall be construed to prohibit a licensed mortgage lender from obtaining, during any period during which the loan is in default and in consideration for the lender not exercising some or all of the remedies to which it is entitled, a written agreement from the borrower to make such advance payments to enable the mortgage lender to have funds on hand for disbursement from payment of such taxes or insurance premiums.

(c) No licensed mortgage lender shall require any borrower to pay any money in escrow to defray future taxes and insurance premiums, or for any other purposes, in connection with a subordinate mortgage loan, except where escrows for such purposes are not being maintained in connection with the mortgage loan superior to such subordinate mortgage loans. (Sept. 9, 1996, D.C. Law 11-155, § 16, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1016. Advertising.

No mortgage lender or mortgage broker required to be licensed under this chapter shall use, or cause to be published, any advertisement which:

(1) Contains any false, misleading, or deceptive statement or representation; or

(2) Identifies the lender or broker by any name other than the name set forth on the license issued by the Superintendent. (Sept. 9, 1996, D.C. Law 11-155, § 17, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1017. Evasive business tactics.

(a) If the Superintendent finds that the conduct of any other business conceals a violation or evasion of this chapter, any rule or regulation adopted under this chapter, or any law regulating mortgage loan lending in the District, the Superintendent may issue a written order to a licensee to:

(1) Stop doing business at any place in which the other business is conducted or solicited; or

(2) Stop doing business in association or conjunction with the other business.

(b) A licensee who violates an order of the Superintendent issued under this section shall be subject to the penalties provided by § 26-1018.

(c) The Superintendent may request the Corporation Counsel of the District of Columbia to take appropriate action for the enforcement of an order issued under this section. (Sept. 9, 1996, D.C. Law 11-155, § 18, 43 DCR 4213.)

Section references. — This section is referred to in § 26-1019.

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1018. Suspension, revocation, and enforcement.

(a) The Superintendent may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee, while acting on behalf of the licensee:

(1) Makes any material misstatement in an application for a license;

(2) Has been convicted of any crime of moral turpitude;

(3) In connection with any mortgage loan or loan application transaction:

(A) Commits any fraud;

(B) Engages in any illegal or dishonest activities; or

(C) Misrepresents or fails to disclose any material facts to anyone entitled to that information;

(4) Violates any provision of this chapter, any rule or regulation adopted under it, or any other law regulating mortgage loan lending in the District;

(5) Engages in a course of conduct consisting of the failure to perform written agreements with borrowers;

(6) Fails to account for funds received or disbursed to the satisfaction of the person supplying or receiving such funds;

(7) Fails to disburse funds in accordance with any agreement connected with, and promptly upon closing of, a mortgage loan, taking into account any applicable right of rescission;

(8) Is convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

(9) Has a judgment entered against such licensee involving fraud, misrepresentation, or deceit;

(10) Has been found by a federal, state, or District agency to be in violation of any law or any regulation applicable to the conduct of the licensee's business;

(11) Refuses to permit an investigation or examination by the Superintendent;

(12) Fails to pay any fee or assessment imposed by this chapter;

(13) Fails to comply with any order of the Superintendent; or

(14) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been, or will not be, conducted honestly, fairly, equitably, and efficiently.

(b)(1) The Superintendent may enforce the provisions of this section or any rules and regulations adopted by issuing an order:

(A) To cease and desist from the violation and any further similar violations; and

(B) Requiring the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation.

(2) If a violator fails to comply with an order issued under paragraph (1) of this subsection, the Superintendent may impose a civil penalty of up to $1,000 for each violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct.

(c) The Superintendent may request the Corporation Counsel of the District of Columbia to take appropriate action in the Superior Court of the District of Columbia for the enforcement of an order issued under this section. The Corporation Counsel may also seek, and the Superior Court of the District of Columbia may order or decree, damages and such other relief allowed by law, including restitution. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days after the date of the order permanently enjoining the unlawful act or practice. In any action brought by the Corporation Counsel by virtue of this provision, the Corporation Counsel shall be entitled to seek attorney's fees and costs.

(d) In determining the amount of financial penalty to be imposed under subsection (b) of this section, the Superintendent shall consider the following:

(1) The seriousness of the violation;

(2) The good faith of the violator;

(3) The violator's history of previous violations;

(4) The deleterious effect of the violation on the public and mortgage industry;

(5) The assets of the violator; and

(6) Any other factors relevant to the determination of the financial penalty.

(e) Nothing in this chapter shall be construed to preclude any individual or entity who suffers loss as a result of any violation of this chapter from

maintaining an action to recover damages or restitution and, as provided by statute, attorney's fees. (Sept. 9, 1996, D.C. Law 11-155, § 19, 43 DCR 4213.)

Section references. — This section is referred to in §§ 26-1017 and 26-1019.

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1019. Hearing procedures.

(a) Before the Superintendent takes any action under § 26-1017 or § 26-1018, the Superintendent shall give the licensee an opportunity for a hearing.

(b) Notice of the hearing shall be given to the licensee and the hearing shall be held in accordance with the contested case provisions of subchapter I of Chapter 15 of Title 1.

(c) The hearing notice to the licensee shall be sent by certified mail, return receipt requested, to the principal place of business of the licensee at least 30 days before the hearing. (Sept. 9, 1996, D.C. Law 11-155, § 20, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1020. Limitation on name of mortgage business.

A mortgage lender or mortgage broker may not do business under any trade name that misrepresents or tends to misrepresent that the mortgage lender is:

(1) A bank, trust company, or savings bank;

(2) A savings and loan association;

(3) A credit union; or

(4) An insurance company. (Sept. 9, 1996, D.C. Law 11-155, § 21, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

§ 26-1021. Authority of Superintendent to issue rules and regulations.

The Superintendent is hereby authorized to promulgate such rules and regulations as deemed necessary and appropriate to implement the provisions of this chapter in accordance with subchapter I of Chapter 15 of Title 1. (Sept. 9, 1996, D.C. Law 11-155, § 22, 43 DCR 4213.)

Legislative history of Law 11-155. — See note to § 26-1001.

CHAPTER 11. CHECK CASHERS.

Sec.
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§ 26-1101. Definitions.

For the purposes of this chapter, the term:

(1) "Check" means any check, draft, money order, personal money order, or other instrument for the transmission or payment of money.

(2) "Check cashing" means the exchange of a check for money delivered to the presenter at the time and place of the presentation.

(3) "Deferred deposit" means a supplemental check cashing service that allows the maker, in the event of a need for emergency cash, to write a personal check and receive cash immediately upon presentment and qualification, while delaying the deposit of the check into his or her personal checking account, pursuant to an agreement with the licensed check casher, for a mutually agreed to number of days following the issue date of the check. Post-dating of personal checks cashed and held for deferred deposit shall be prohibited.

(4) "Issue date" means, on a check held for deferred deposit, the date the check is cashed and the deferred deposit agreement is originated.

(5) "Licensee" means any person duly licensed by the Superintendent pursuant to this chapter.

(6) "Limited station" means a type of check cashing business that authorizes the licensee to carry on the business of cashing checks for employees of a single and particular business or office and at a single location at or near such particular business or office site.

(7) "Mobile unit" means any vehicle or other movable structure from which the business of cashing checks is to be conducted.

(8) "Person" means an individual, firm, corporation, business trust, estate, trust, partnership, limited liability company, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity, or group of individuals however organized but does not include the United States government, the government of the District of Columbia, or the United States Postal Service.

(9) "Superintendent" means the Superintendent of the Office of Banking and Financial Institutions. (May 12, 1998, D.C. Law 12-111, § 2, 45 DCR 1782.)

Legislative history of Law 12-111. — Law 12-111, the "Check Cashers Act of 1998," was introduced in Council and assigned Bill No. 12-338. The Bill was adopted on first and second readings on January 6, 1998, and February 3, 1998, respectively. Signed by the Mayor on February 24, 1998, it was assigned Act No. 12-300 and transmitted to both Houses of Congress for is review. D.C. Law 12-111 became effective on May 12, 1998.

§ 26-1102. Requirement of license.

Except as provided in § 26-1103 no person, including a person doing so on May 12, 1998, shall engage in the business of cashing checks for consideration without first obtaining a license from the Superintendent pursuant to this chapter. No separate license under this chapter shall be required for any agent of a licensee. (May 12, 1998, D.C. Law 12-111, § 3, 45 DCR 1783.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1103. Exemptions.

The provisions of the chapter shall not apply to:

(1) Banks, credit unions, trust companies, building and loan associations, and savings and loan associations organized under the laws of the United States or of the District of Columbia or authorized to do business in the District of Columbia;

(2) The United States Postal Service; or

(3) Any person who cashes checks without consideration or a charge. (May 12, 1998, D.C. Law 12-111, § 4, 45 DCR 1783.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1104. Form and contents of application for license.

(a) An application for a license under this chapter shall be in writing under oath in the form prescribed by the Superintendent.

(b) The application shall include:

(1) If the applicant is an individual, the applicant's name, business address and telephone number, and residence address and telephone number;

(2) If the applicant is a partnership or other non-corporate business association, the business name, business address and telephone number, and the residence address and telephone number of each:

(A) General partner, if the applicant is a limited partnership;

(B) General partner who holds the interest in the partnership or more than 10 % interest if the applicant is a general partnership; or

(C) Member, if the applicant is a limited liability company or other non-corporate business association;

(3) If the applicant is a corporation:

(A) The name, address, and telephone number of the corporate entity; and

(B) The name, business telephone number, and the residence and telephone number of the president, senior vice presidents, secretary, treasurer, each director, and each stockholder owning or controlling 10 % or more of any class of stock in the corporation;

(4) The applicant's business plan;

(5) The name under which the check cashing business is to be conducted;

(6) The name and address of the applicant's registered agent;

(7) The location at which the applicant proposes to conduct business;

(8) If the applicant seeks to conduct business from a mobile unit, the District registration number or other identification of the mobile unit and the area in which the applicant proposes to operate the mobile unit;

(9) If the applicant seeks to conduct business from a limited station, the group of employees that would be served and the location at which these employees would be served; and

(10) Any other information that the Superintendent requires. (May 12, 1998, D.C. Law 12-111, § 5, 45 DCR 1783.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1105. Application and license fees.

At the time of filing an application under this chapter, each applicant shall pay to the Superintendent a non-refundable license fee of $300, except that an applicant for a license to maintain one or more limited stations shall pay the non-refundable limited station license application fee as provided in § 26-1114. (May 12, 1998, D.C. Law 12-111, § 6, 45 DCR 1784.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1106. Bond to accompany application for license.

(a) At the time of filing an application under this chapter, each applicant shall file with the Superintendent a bond in the sum of $5,000 for each location and mobile unit from which the applicant proposes in the application to conduct business. The bond shall be issued by a person authorized to issue such bonds in the District and shall be in a form satisfactory to the Superintendent. To satisfy the requirements of this section, the bond shall be effective on the date the license is issued by the Superintendent and run to the Superintendent for the use of the District. The applicant shall be the obligor of the bond. The bond must be conditioned upon the observance by the applicant of all the provisions of this chapter and of all rules and regulations lawfully made by the Superintendent hereunder, and must be for the benefit of the District concerning any and all monies that become due or owing to the District from the applicant under this chapter as well as for the benefit of any private claimants against the applicant with respect to the cashing of checks in the District. The surety on the bond shall have the right to cancel such bond upon giving 30 days written notice to the Superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. Any license issued pursuant to this chapter shall be revoked, and void, by operation of law during any period when the bond required by this section is not in full force and effect.

(b) If the Superintendent, at any time, reasonably determines that the bond is insecure, deficient in amount, or exhausted in whole or in part, or if the surety on the bond has notified the Superintendent of its intention to cancel the bond, the Superintendent may, by written order, require the filing of a new or supplemental bond in order to secure compliance with this chapter. The licensee shall comply with the order within 20 days following service of the order upon the licensee. (May 12, 1998, D.C. Law 12-111, § 7, 45 DCR 1784.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1107. Minimum liquid assets required.

Each applicant shall demonstrate, in a form satisfactory to the Superintendent, the availability of capital of at least $25,000 for the operation of the business of each location and mobile unit from which the applicant proposes in the application to conduct business. Each licensee shall continuously maintain capital of at least $5,000 for the operation of the business of each location and mobile unit from which the licensee conducts business. (May 12, 1998, D.C. Law 12-111, § 8, 45 DCR 1785.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1108. Granting of license; investigations.

(a) Upon the filing of an application in proper form, including the required fee and accompanying documents, the Superintendent shall issue to the applicant a license to engage in the cashing of checks in the District of Columbia, unless the Superintendent finds that the requirements prescribed by subsection (b) of this section and §§ 26-1104, 26-1105, 26-1106, and 26-1107 have not been met.

(b) The financial responsibility, conditions, and business experience of the applicant or licensee must be such as to warrant the belief that the applicant's business will be conducted honestly and carefully. The Superintendent may investigate and consider the qualifications of the applicant or licensee (including the officers and directors of the applicant) in determining whether the requirement has been met. (May 12, 1998, D.C. Law 12-111, § 9, 45 DCR 1785.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1109. Issuance and form of license.

A license to cash checks shall state:

(1) The name of the licensee;

(2) The names of the members of the licensee (if applicable);

(3) The date of issuance and of expiration of the license;

(4) The date and state of incorporation of the licensee (if applicable);

(5) If the business is to be conducted at a specific address, the address at which the business is to be conducted; and

(6) If the business is to be conducted through the use of a mobile unit or a limited station, the words "Mobile Unit License," or "Limited Station License", the District registration number or other identification of the mobile unit or limited station, and the area in which the applicant is authorized to operate the mobile unit or limited station. (May 12, 1998, D.C. Law 12-111, § 10, 45 DCR 1785.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1110. Display of license.

A license issued pursuant to this chapter shall be conspicuously displayed in the place of business of the licensee or, in the case of a mobile unit, upon the mobile unit. (May 12, 1998, D.C. Law 12-111, § 11, 45 DCR 1786.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1111. Time and renewal of license.

(a) A license issued to a check-cashing business shall remain in full force and effect through the 31st day of December following its date of issuance, unless earlier surrendered, suspended, or revoked.

(b) If an application for a renewal license, along with a license renewal fee of $200, has been filed with the Superintendent at least 30 days before the expiration of the license in force, such license shall continue in full force and effect either until the issuance by the Superintendent of the renewal license applied for or until 5 days after the Superintendent has refused to issue the renewal license and has given notice of such refusal to the applicant. Except for the fee, the requirements for the issuance of a renewal license shall be the same as the requirements for the issuance of the initial license. If the Superintendent denies the applicant the authority to operate at a particular location, the operation of business at that particular location shall cease 5 days after the Superintendent has refused to issue a renewal license to cover the location and has given notice of such refusal to the applicant. (May 12, 1998, D.C. Law 12-111, § 12, 45 DCR 1786.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1112. Transferability of license.

A license issued pursuant to this chapter shall not be transferable or assignable. (May 12, 1998, D.C. Law 12-111, § 13, 45 DCR 1786.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1113. Limitation of license.

Not more than one location of business or mobile unit shall be maintained under the same license. More than one license may be issued to the same licensee upon compliance with this chapter for each new license. (May 12, 1998, D.C. Law 12-111, § 14, 45 DCR 1786.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1114. License for limited station.

Any licensee may open and maintain, within the District, one or more limited stations for the purpose of cashing checks for the particular group or groups specified in the license authorizing each limited station. A separate license shall be issued for each limited station maintained by the same licensee. The stations shall be licensed in accordance with all of the provisions of this chapter applicable to licensees, and the applicant shall pay a non-refundable limited station license application fee of $150 for each limited station. Such fee may be changed in the rules and regulations promulgated by the Superintendent as he or she deems necessary. (May 12, 1998, D.C. Law 12-111, § 15, 45 DCR 1786.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1115. Change of location of business or area; other miscellaneous activity.

A licensee may make a written application, in the form prescribed by the Superintendent, to the Superintendent for leave to change the licensee's location of business, or in the case of a mobile unit, the area in which the mobile unit is authorized to be operated, stating the reasons for the proposed change. If the Superintendent approves the application, the Superintendent shall issue a revised license in accordance with this chapter, stating the new location of the licensee or, in the case of a mobile unit, the new area in which the mobile unit may be operated. The revised license shall be for the same term as the original license to which the Superintendent made the requested change. The fee for a revised license due to a change of location of business or area shall be $50. (May 12, 1998, D.C. Law 12-111, § 16, 45 DCR 1786.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1116. Revocation and suspension of license.

(a) The Superintendent may revoke any license issued pursuant to this chapter if, after notice and a hearing, the Superintendent finds that the licensee has:

(1) Committed any fraudulent acts, engaged in any dishonest activities, or made any misrepresentation in any business transaction;

(2) Been convicted of a felony under the laws of the District or the laws of any state or the United States;

(3) Violated any provisions of the banking laws of the District or any rules or regulations promulgated thereunder, or has violated any other law in the course of dealings as a licensee;

(4) Made a material misstatement in the application for a license under this chapter;

(5) Demonstrated incompetency or untrustworthiness to act as a licensee;

(6) Violated any provision of this chapter or of any implementing regulation; or

(7) Failed to satisfy any of the criteria for obtaining a license as set out in §§ 26-1106, 26-1107, or 26-1108.

(b) A hearing for the purposes of this section shall be held in accordance with subchapter I of Chapter 15 of Title 1. Pending a hearing for the revocation of any license issued pursuant to this chapter, the Superintendent may suspend the license for a period not to exceed 30 days if the Superintendent determines that such a suspension is in the public interest and that one or more grounds for revocation of a license, as set forth in subsection (a) of this section, exist.

(c) Whenever the Superintendent suspends or revokes a license issued pursuant to this chapter, the Superintendent shall immediately execute a written order stating the grounds for the suspension or revocation. On the date the order is executed, the Superintendent shall serve a copy thereof on the licensee either personally or by mailing the same to the last known address of the licensee. (May 12, 1998, D.C. Law 12-111, § 17, 45 DCR 1787.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1117. Limitations on fees for cashing checks.

(a) No licensee under this chapter shall directly or indirectly charge or collect in fees or charges for cashing a check a sum to exceed 5% of the face value of a government or payroll check, 7% of the face value of an insurance check, 10% of the face value of a personal check or money order, or $4, whichever is greater. An additional verification, handling, and documentation processing fee may be charged, pursuant to § 26-1119, for a personal check held for deferred deposit. Each licensee shall conspicuously post, in both English and Spanish, and at all times display in every location and upon every mobile unit licensed under this chapter, a schedule of fees and charges permitted hereunder, which schedule shall be approved by the Superintendent prior to posting.

(b) The fees for cashing a check shall be evidenced by a receipt. Such receipt shall be presented to the purchaser upon completion of the transaction. (May 12, 1998, D.C. Law 12-111, § 18, 45 DCR 1787.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1118. Books, accounts, and other records of licensee.

Each licensee under this chapter shall keep and use such books, accounts, and other records as the Superintendent shall require to carry into effect the provisions of this chapter and any rules and regulations issued by the Superintendent under this chapter. Every licensee shall preserve such books, accounts, and records for at least 3 years. (May 12, 1998, D.C. Law 12-111, § 19, 45 DCR 1788.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1119. Limitations on business.

(a) No licensee under this chapter shall engage in the business of discounting of notes, bills of exchange, checks, or other evidences of indebtedness, nor shall such a discounting business be conducted on the same premises where the licensee is conducting business pursuant to this chapter.

(b) No licensee shall at any time cash or advance any monies on a post dated check.

(c)(1) No licensee shall at any time cash or advance any monies on a personal check for a fee in excess of 10% of the face amount of the check as set out in § 26-1117; provided, however, that where the licensee enters into an agreement with a customer to hold his or her personal check for deferred deposit, the licensee may charge an additional fee for verification, handling, and documentation processing totaling no more than $5 on a personal check with a face amount of up to $250; no more than $10 on a personal check with a face amount of $250.01 to $500; no more than $15 on a personal check with a face amount of $500.01 to $750; and no more than $20 on a personal check with a face amount of $750.01 to $1,000.

(2) A personal check for deferred deposit must bear an issue date of not later than the date the check is cashed and the deferred deposit agreement is originated.

(3) The deposit date of a check held for deferred deposit shall not exceed 31 days following the issue date of the check as agreed to in the Deferred Deposit Disclosure Agreement, Addendum I; provided, however, that when the deposit date occurs on a weekend or bank holiday, the check may be deposited on the next business day.

(4) The minimum face amount of a check held for deferred deposit must amount to no less than $50. The aggregate face amount of checks being held for deferred deposit must not exceed $1,000 per customer.

(5) The licensee shall retain all rights and privileges of a holder in due course on checks presented for deferred deposit.

(6) The license to offer deferred deposit services shall be limited to only those businesses whose dominant business activity is financial services. The licensee may offer deferred deposit services only when the Superintendent has determined that the licensee's dominant business activity is financial services.

(7) Fees charged for deferred deposit transactions shall be evidenced by a receipt. Such receipt shall be presented to the purchaser upon completion of the transaction. (May 12, 1998, D.C. Law 12-111, § 20, 45 DCR 1788.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1120. Formal investigations.

Whenever it appears that an individual or entity licensed or required to be licensed under this chapter has violated or is violating any law, agreement, order, rule, or regulation or has engaged in an unsafe or unsound practice, the Superintendent may issue an order to conduct a formal investigation of such person. The Superintendent may cause any investigation, or portion of such investigation, to be conducted by a District or federal law enforcement agency

by making the request for assistance from such agency. (May 12, 1998, D.C. Law 12-111, § 21, 45 DCR 1789.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1121. Cease and desist orders.

(a) The Superintendent may institute an administrative cease and desist proceeding if the Superintendent determines that a licensee or person required to have a license under this chapter has violated, is violating, or is about to violate any provision of this chapter or any rule, regulation, order, or condition imposed by the Mayor or Superintendent, or written agreement entered into with the Mayor or Superintendent, pursuant to this chapter.

(b)(1) A cease and desist proceeding shall be initiated by the issuance of a notice of charges which shall contain a statement of facts describing the alleged violation or violations.

(2) The notice of charges shall set a date, time, and place at which a hearing will be held to determine whether a cease and desist order should be issued against a licensee or person required to have a license. The hearing date shall be no earlier than 30 days and no later than 60 days after the date of service of the notice, unless otherwise prescribed by the Superintendent or the hearing officer.

(c) A cease and desist order may require the person licensed, or required to be licensed, to cease and desist the violation or violations.

(d) The Superintendent may issue and serve upon the licensee, or person required to be licensed, a final cease and desist order if:

(1) The licensee or person agrees to settle the proceeding by consenting to the order as negotiated by the Superintendent, prior to the commencement of the hearing;

(2) The licensee or person served with the notice of charges fails to appear at the hearing, in which case the licensee or person shall be deemed to have consented to the order as issued; or

(3) Substantial evidence in the hearing record supports the determination of the Superintendent that the violation or violations specified in the notice of charges has transpired.

(e) A final cease and desist order shall become effective 10 days after the service of the order in accordance with subsection (d) of this section, except that a final cease and desist order which has been issued upon consent shall become effective upon the date specified in the order. In any case, a final cease and desist order shall remain in effect until it is stayed, modified, terminated, or set aside by the Superintendent or a reviewing court.

(f) A hearing for purposes of this section shall be held in accordance with subchapter I of Chapter 15 of Title 1. (May 12, 1998, D.C. Law 12-111, § 22, 45 DCR 1789.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1122. Authority of Superintendent to issue rules and regulations.

The Superintendent may promulgate such rules and regulations as deemed necessary and appropriate to implement the provisions of this chapter. (May 12, 1998, D.C. Law 12-111, § 23, 45 DCR 1790.)

Legislative history of Law 12-111. — See note to § 26-1101.

§ 26-1123. Penalties.

(a) Any person who violates any provision of this chapter, any rule or regulation adopted pursuant to this chapter, or any order of the Superintendent directed to that person, shall be liable for a penalty of not more than $1,000 for each violation.

(b) Any person who cashes any check in the District of Columbia without a license issued pursuant to this chapter shall, in addition to the penalty prescribed in subsection (a) of this section, be liable to the District government in an amount equal to all license fees that would have been paid had the person obtained such a license.

(c) The Corporation Counsel may bring proceedings to recover all amounts due to the District under this section. (May 12, 1998, D.C. Law 12-111, § 24, 45 DCR 1790.)

Temporary addition of chapter. — Section 13(a)-(f) of D.C. Law 12-210 added a new Chapter 12 of Title 26 to read as follows:

"§ 26-1201.

"For purposes of this section:

"(1) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

"(2) "Financial institution" means the institution as defined in section 469A(d)(1) of the Social Security Act, approved August 22, 1996 (110 Stat. 2105; 42 U.S.C. § 669A(d)(1)).

"(3) "IV-D agency"' means the organizational unit of the District government, or any successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of child support orders and spousal support orders in which the spouse or former spouse is living with a child for whom the spousal support obligor also owes support.

"§ 26-1202.

"A financial institution doing business in the District shall:

"(1) Upon the request of the IV-D agency enter into agreements with the IV-D agency to develop and operate a data-match system in which the financial institution is required to provide for each calendar quarter the name, record address, Social Security number or other taxpayer identification number, and other identifying information (including account number) for each noncustodial parent who maintains an account at the institution, individually or jointly, and who owes past-due child or spousal support that is enforced by the IV-D agency, as identified by the Mayor by name and Social Security number or other taxpayer identification number, and

"(2) Encumber or surrender assets held by the institution on behalf of a noncustodial parent who is subject to a child support lien pursuant to § 30-524, in response to a notice of lien or levy from the Superior Court or the IV-D agency.

"§ 26-1203.

"The IV-D agency may pay a reasonable fee to a financial institution for conducting the data match provided for in subsection (b) of this section not to exceed the actual costs incurred by such financial institution.

"§ 26-1204.

"A financial institution shall not be liable under any District law for:

"(1) Any disclosure of information to the IV-D agency under subsection (b) of this section;

"(2) Encumbering or surrendering, in response to a notice of lien or levy issued by the IV-D agency, any assets it holds; or

"(3) Any other action taken in good faith to comply with subsection (b) of this section.

"§ 26-1205.

"A financial institution that intentionally fails to comply with subsection (b) of this section shall be subject to a penalty of $5,000 for each failure to conduct a data match with data that the IV-D agency submits or attempts to submit to the financial institution. For purposes of this subsection, a single data submission may include data concerning multiple obligors. Penalties pursuant to this subsection shall be enforced in the Superior Court by the Corporation Counsel of the District of Columbia.

"§ 26-1206.

"The IV-D agency shall disclose a person's financial records obtained from a financial institution only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation of that person. Unauthorized disclosure may result in the awarding of civil damages pursuant to section 469A(c) of Social Security Act, approved August 22, 1996 (110 Stat. 2105; 42 U.S.C. 659A(c))."

Section 15(b) of D.C. Law 12-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of a new Chapter 12 of Title 26, comprised of §§ 26-1201 through 26-1206, see § 12(a)-(f) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, November 10, 1998, 45 DCR 6110), § 12(a)-(f) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, February 2, 1999, 45 DCR 8495), and § 12(a)-(f) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

Section 15 of D.C. Act 12-503 provides for the application of the act.

Legislative history of Law 12-111. — See note to § 26-1101.

Legislative history of Law 12-210. — Law 12-210, the "Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-657. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 16, 1998, it was assigned Act No. 12-497 and transmitted to both Houses of Congress for its review. D.C. Law 12-210 became effective on April 13, 1999.

TITLE 27. CEMETERIES AND CREMATORIES.

CHAPTER 1. CEMETERY ASSOCIATIONS; REGULATORY PROVISIONS.

§ 27-114. Distance from City and from dwellings.

No person or persons or cemetery association shall lay out any new cemetery, or part of any cemetery, within the City of Washington, in the District of Columbia, nor in said District, within one and one-half miles from the boundaries of said City; no person or cemetery association shall, in said District, lay out any cemetery, or part of any cemetery, within less than 200 yards of any dwelling house, except with the written consent of the owner, lessee, and occupant of such house, nor without a permit to do so from the Mayor of said District. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 670; 1973 Ed., § 27-114; Apr. 9, 1997, D.C. Law 11-255, § 26, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic and technical correction.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.